Notes and Brief Reports

Report of the National Commission on State Workmen's Compensation Laws*

After a year of hearings and intensive evaluation of the evidence available, the National Commission on State Workmen's Compensation Laws has concluded that the protection furnished by the 50 State-administered programs is, in general, "neither adequate nor equitable."

The Commission feels, however, that the role of a modern workmen's compensation program could be a substantial and vital one and that the States should continue to have primary responsibility in this area. In its report, therefore, the Commission recommended that the States be given an opportunity to remodel their laws before mandatory Federal standards are adopted.

The 15-member Commission, which issued its report on July 31, 1972, was appointed by the President under the Occupational Safety and Health Act of 1970. The appointees represented State workmen's compensation agencies, business, labor, insurance carriers, the medical profession, educators, and the general public.

The Commission saw its own role as one of providing guidelines for the States in reforming their work-injury laws. A majority of the members concluded that the States should be given until July 1, 1975, to comply with the essential elements of the recommendation.[1] The report urges that, if the States are still lagging at that time, Congress should then act to secure compliance with the essential recommendations. The Commission believes "that the threat of or, if necessary, the enactment of Federal mandates will remove from each State the main barrier of 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."

The "essential" recommendations call for:

1 *Compulsory rather than elective coverage, with no exemptions for small firms or government employment.* More than one-third of the States currently have elective laws and barely half the States cover all employers without numerical exemptions Coverage should eventually be extended to farm workers on the same basis as to all other employees, but in the interim an agricultural employer should be required to provide coverage if his annual payroll is more than $1,000 Household and casual employment should be covered as they are under the old-age, survivors, disability, and health insurance program. (Currently, only a third of the States provide any coverage of farm workers, and, except in a few States, household employment is not covered at all.) Exemptions should not be permitted for any class of employees

2. *Employee's choice of jurisdiction for filing interstate claims to be broadened.* Employee should be able to file in the State where the injury or death occurred, where the employment was principally localized, or where the employee was hired

3. *Full coverage of work-related diseases, similar to that now provided for work-related accidents and injuries* Ten States still cover only certain specified diseases.

4. *Adequate weekly cash benefits for temporary total disability, permanent total disability, and death cases* Weekly cash benefits should be at least two-thirds of the worker's gross weekly wage. The amount would be subject to a maximum weekly benefit amount of no less than 66⅔ percent of the State's average weekly wage by July 1, 1973, and 100 percent of the State's average weekly wage by July 1, 1975. In more than half the States the maximum weekly benefit for temporary total disability benefits is less than $79.56—the national poverty level for a nonfarm family of four.

5. *No arbitrary limits on the amount or duration of benefits for permanent total disability or for death.* Nineteen States currently limit the payment of permanent disability benefits, and more than two-thirds of the States limit death benefits. Benefits should be paid for the duration of the worker's disability or for life and, in case of death, should be paid to a widow or widower for life or until remarriage. On remarriage, a lump sum equivalent to 2 years' benefits should be paid. Surviving children should receive benefits until they reach age 18 or to age 25 if full-time students.

6. *Full medical and physical rehabilitation services without statutory limits on dollar amount or length of time.* The right to medical and physical rehabilitation benefits should not terminate with the mere passage of time. Nine States currently limit medical benefits: limits on physical rehabilitation services vary widely among the States.

The Commission urged the States to incorporate these essential recommendations into their workmen's compensation programs as soon as feasible. It estimated that the 1975 recommenda-

* Prepared in the Interprogram Studies Branch, Division of Economic and Long-Range Studies. Summarized from the *Report of the National Commission on State Workmen's Compensation Laws*, July 1972.

[1] The recommendation on this issue drew the major dissent from members of the Commission. Three members —two of whom represented labor organizations—recommended that Congress be asked to enact Federal standards now.

tions could be met in 45 jurisdictions through an increase in workmen's compensation costs of less than 50 percent: In four States, the increase would be less than 10 percent, in 20 States it would be between 10.0 percent and 29.9 percent, and in 21 States it would be 30.0–49.9 percent. These costs, the Commission said, are within the economic capability of employers and the States.

The Commission proposed that, if Federal mandatory standards are deemed necessary at the time of the 1975 review an enforcement mechanism should be introduced that would place the primary burden of compliance on the employer. Specifically, in those States where the scope of protection had not been broadened to include the essential recommendations, employers would be required to provide supplemental insurance or self-insurance. The normal enforcement method would be the imposition of fines on noncomplying employers. Most claims would be handled by existing State workmen's compensation agencies using their regular procedures.

The Commission emphasized that its members were

> without exception supporters of the basic principles of workmen's compensation We have criticized the present State workmen's compensation programs but not because we believe the basic principles are inherently wrong—indeed they are right. We voice our criticism because present practice falls so far short of the basic principles, and because there is no possible justification for this shortfall.

The Commission rejected such suggestions as Federal takeover of the State programs, abolishing workmen's compensation and reverting to negligence suits, or disassembling the program and distributing the components elsewhere (disability benefits to OASDHI, for example). Nevertheless, the Commission felt that there is a role for creative Federal assistance and urged the President to appoint a permanent Federal commission to provide encouragement and technical assistance to the States.

About 60 additional recommendations were included in the Report that were considered somewhat less significant than those termed "essential" since they do not call for mandatory Federal support. Included among these recommendations are proposals that—

1. An injured worker should not be required to wait more than 3 days before benefits begin, and retroactive payments for this waiting period should begin after 14 days

2 The maximum weekly cash benefit should be progressively raised until in 1981 it reaches at least 200 percent of the State's average weekly wage

3 The weekly cash benefit should eventually be calculated as 80 percent of the worker's spendable weekly earnings (subject to the State maximum on weekly benefits): no additional allowances for dependents or tax considerations would thus be necessary or appropriate

4. Minimum weekly benefits for death cases should be at least 50 percent of the average weekly wage in the State.

5 OASDHI benefits for permanent and total disability should continue to be offset for receipt of workmen's compensation disability benefits but that, in death cases, workmen's compensation benefits should be reduced by the amount of any payments received from OASDHI by the deceased worker's family.[2]

6. Persons receiving permanent total disability benefits or death benefits should have their benefits increased as the State's average weekly wage rises and in the same proportion.

7 The worker should be permitted initially to select his physician either from among all licensed physicians or from an agency-selected panel of physicians.

8 Each State should establish a second-injury fund with broad coverage of preexisting impairments (A second-injury fund, by charging employers only for benefits associated with a second injury, encourages employers to employ handicapped workers)

9 Each State should establish a medical rehabilitation division with responsibility for assuring all workers access to effective medical care and vocational rehabilitation services, and special cash-maintenance benefits should be provided during the period of a worker's rehabilitation.

10 Time limits for filing claims should be liberalized in view of the substantial lag that may occur between exposure to a disease-producing substance and the manifestation or diagnosis of the disease.

11 To fulfill its administrative obligations, every State should utilize a workmen's compensation agency, staffed by full-time civil-service employees and financed through assessments against insurance carriers and self-insurers.

The Commission was neutral on the type of insurance system to be used by employers to insure their obligations. It recommended that each State be free to continue its present insurance arrangements or, if the States wish, to permit private insurance, self-insurance, and State funds where any of these types of insurance now are absent. It did feel that States should establish procedures to provide benefits to employees whose benefits

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[2] Three members who objected to the proposal for the use of offsets between the two programs filed dissenting statements.

TABLE M-23 —Unemployment insurance: Selected data on State programs, 1940–72

[Excludes programs for Federal employees and for ex-servicemen, includes unemployment compensation for State and local government employees where covered by State law]

Period	Average weekly insured unemployment [1]		Initial claims (weekly average) [4]	Number of first payments	All types of compensated unemployment			Average weekly benefit for total unemployment [6]	Number of claimants exhausting benefits [7]	Funds available for benefits, end of period [8] (in thousands)
	Number of workers [2]	Percent of covered employment [3]			Weeks compensated	Benefits paid [5] (in thousands)	Average weekly number of beneficiaries			
1940	1,282,385	5 6	214,231	5,220,073	51,084,375	$518,700	982,392	$10.56	2,596,128	$1,817,108
1945	589,110	2 1	116,325	2,861,190	24,179,769	445,866	464,996	18 77	254,271	6,914,009
1950	1,503,164	4 6	235,590	5,211,883	67,859,529	1,373,114	1,304,991	20 76	1,853,336	6,972,295
1955	1,253,836	3 5	225,861	4,507,894	56,099,729	1,350,268	1,099,466	25.04	1,272,232	8,263,850
1960	1,905,752	4 8	331,027	6,753,387	85,630,399	2,726,656	1,640,429	32 87	1,603,372	6,643,257
1961	2,290,311	5.6	349,745	7,066,467	104,217,226	3,422,698	2,004,177	33.80	2,370,833	5,802,038
1962	1,783,118	4.4	302,112	6,073,668	79,324,955	2,675,447	1,525,481	34.56	1,638,359	6,272,863
1963	1,805,816	4 3	297,699	6,040,335	80,137,101	2,774,668	1,541,098	35 28	1,568,558	6,648,314
1964	1,605,395	3 8	268,015	5,497,903	71,380,122	2,522,100	1,372,695	35 96	1,370,857	7,296,220
1965	1,327,629	3 0	231,652	4,813,229	58,813,298	2,166,004	1,131,025	37.19	1,085,977	8,357,350
1966	1,061,395	2 3	203,351	4,140,026	46,546,925	1,771,298	895,133	39.76	780,700	9,828,244
1967	1,204,507	2.5	226,126	4,628,083	52,902,523	2,092,338	1,017,356	41.25	867,403	10,778,138
1968	1,110,646	2.2	201,200	4,197,699	48,668,357	2,031,617	935,930	43.43	848,179	11,717,246
1969	1,101,429	2.1	199,695	4,216,938	47,970,160	2,127,877	922,503	46.17	811,532	12,637,508
1970	1,804,631	3 4	295,911	6,401,782	78,857,992	3,848,467	1,516,500	50 34	1,295,319	11,895,901
1971	2,150,473	4 1	294,945	[9] 6,540,358	[9] 94,312,380	[9] 4,957,026	[9] 1,813,700	[9] 54 02	[9] 1,981,075	9,703,424
1971										
May	2,000,737	3 8	238,118	415,572	7,430,852	434,196	1,769,250	52 32	175,682	10,841,287
June	1,892,676	3 6	250,338	426,176	7,541,579	451,385	1,713,995	52 09	187,219	10,590,268
July	1,992,940	3 8	341,506	441,956	[9] 6,739,852	[9] 428,002	[9] 1,458,983	[9] 55 47	[9] 163,906	10,431,418
August	1,912,248	3 6	282,003	578,539	[9] 6,502,567	[9] 433,636	[9] 1,472,352	[9] 56 27	[9] 161,142	10,530,552
September	1,739,103	3 3	236,122	402,272	[9] 5,923,023	[9] 400,329	[9] 1,327,910	[9] 56 48	[9] 148,837	10,310,048
October	1,716,322	3 2	251,595	[9] 365,536	[9] 5,561,272	[9] 367,169	[9] 1,279,992	[9] 53 46	[9] 136,107	10,093,013
November	1,878,625	3 5	298,211	[9] 421,329	[9] 6,177,004	[9] 406,905	[9] 1,403,864	[9] 53 96	[9] 140,326	10,031,656
December	2,221,488	4 2	358,159	[9] 571,630	[9] 7,546,204	[9] 489,566	[9] 1,640,479	[9] 54 58	[9] 153,654	9,703,424
1972										
January	2,524,498	4 8	385,075	[9] 751,704	8,972,711	550,902	2,136,360	55 35	170,064	9,276,664
February	2,491,664	4 7	292,649	[9] 626,561	[9] 8,870,551	[9] 589,509	[9] 2,112,036	[9] 56 71	[9] 168,955	8,946,263
March	2,279,251	4 3	241,980	[9] 521,018	9,526,340	628,936	2,070,943	57 21	182,317	8,566,234
April	2,004,900	3 8	236,593	[9] 381,225	7,319,895	472,916	1,829,974	56 90	171,317	8,565,664
May	1,740,112	3 3	215,838	[9] 355,636	6,926,614	429,206	1,505,786	56 32	178,475	9,361,434

[1] Beginning July 1963, includes Puerto Rican sugarcane workers' program

[2] Workers reporting completion of at least 1 week of unemployment

[3] Annual rates based on average covered employment in specified year; monthly rates on average for most recent 12-month period

[4] Notices filed by workers to indicate they are starting period of unemployment. Excludes transitional claims.

[5] Annual data, but not monthly data, adjusted to exclude voided benefit checks and transfers under Interstate combined-wage plan Includes payments under State (but not Federal) temporary extended unemployment insurance provisions.

[6] Includes dependents' allowances in States that provide such benefits.

[7] Includes temporary extended benefit exhaustions.

[8] Sum of balances in State clearing accounts, benefit-payment accounts, and State accounts in Federal unemployment trust fund.

[9] Excludes States for which data are not available, see table M-24, footnote 9.

Source Department of Labor, Manpower Administration, Office of Financial and Management Information Systems.

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are endangered because of an insolvent carrier or employer or because an employer fails to comply with the law.

The Commission also felt that, as further incentive for safety programs, the experience rating principle (adjustment of premium rates according to risk) should be extended to as many small employers as practicable. It also recommended that every insurance carrier be required to provide accident prevention services.