



# Workers' Compensation Issues at a National Level

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Executive Committee – Board of Managers  
National Council of Self-Insurers

May 7, 2020



WHO ARE WE?



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# Some Thoughts on Self-Insurance



# Issues and Current Trends



Attacks on Exclusive Remedy



Federalization



State Efforts

# Attacks on Exclusive Remedy



# The Demolition of Workers' Comp

Over the past decade, states have slashed workers' compensation benefits, denying injured workers help when they need it most and shifting the costs of workplace accidents to taxpayers.

by Michael Grabell, ProPublica, and Howard Berkes, NPR  
March 4, 2015







## Work injuries and illnesses impose heavy costs on workers, families and the economy

Forty-four years after Congress passed the Occupational Safety and Health Act of 1970, requiring employers to provide workplaces “free from recognized hazards that are causing or likely to cause death or physical harm” to their workers,<sup>1</sup> the toll of workplace injuries, illnesses and fatalities in the United States remains unacceptably high. The Bureau of Labor Statistics (BLS) reports that approximately 4,500 workers are killed on the job each year. BLS estimates that there are nearly three million serious workplace injuries and illnesses annually on legally recordable workplace injuries and illnesses, including deaths, amputations, and other serious conditions requiring care beyond first aid. About half of recorded injuries are lost days from work, a job barrier to recovery.<sup>3</sup>

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**ADDING INEQUALITY TO INJURY:  
THE COSTS OF FAILING TO  
PROTECT WORKERS ON THE JOB**



## Injured workers and taxpayers subsidize high hazard employers

The workers' compensation systems created in each state were originally intended to have employer-provided insurance reimburse workers for lost wages while providing first-dollar medical coverage and rehabilitation for work-related injuries. Under this “no-fault” system, workers have lost the right to sue their employer, but, in theory, have gained relatively certain access to benefits following their injury.

In reality, the costs of workplace injury and illness are borne primarily by injured workers, their families, and taxpayer-supported safety-net programs. State legislatures and courts have made it increasingly

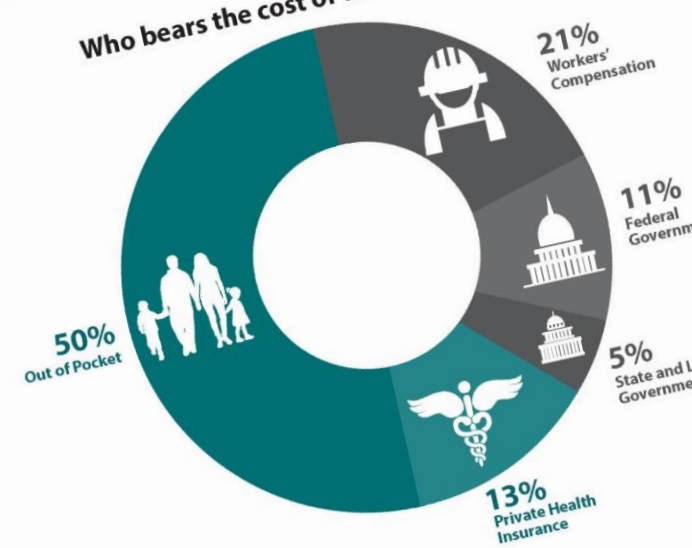
difficult for injured workers to receive the payments for lost wages and medical expenses that they deserve.<sup>13</sup> As a result of this cost-shifting, workers' compensation payments cover only a small fraction (about 21 percent) of lost wages and medical costs of work injuries and illnesses; workers, their families and their private health insurance pay for nearly 63 percent of these costs, with taxpayers shouldering the remaining 16 percent.

Moreover, only a fraction of injured workers receive any workers' compensation benefits through state workers' compensation programs. Several studies have found that fewer than 40 percent of eligible workers

In concept, employer insurance covers lost wages and medical expenses, and



## Who bears the cost of worker injuries?<sup>14</sup>



Federalization





## 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.<sup>1</sup> 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."

\* 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.

<sup>1</sup> 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.

The "essential" recommendations call for:

1. *Compulsory rather than elective coverage, with no exceptions 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.

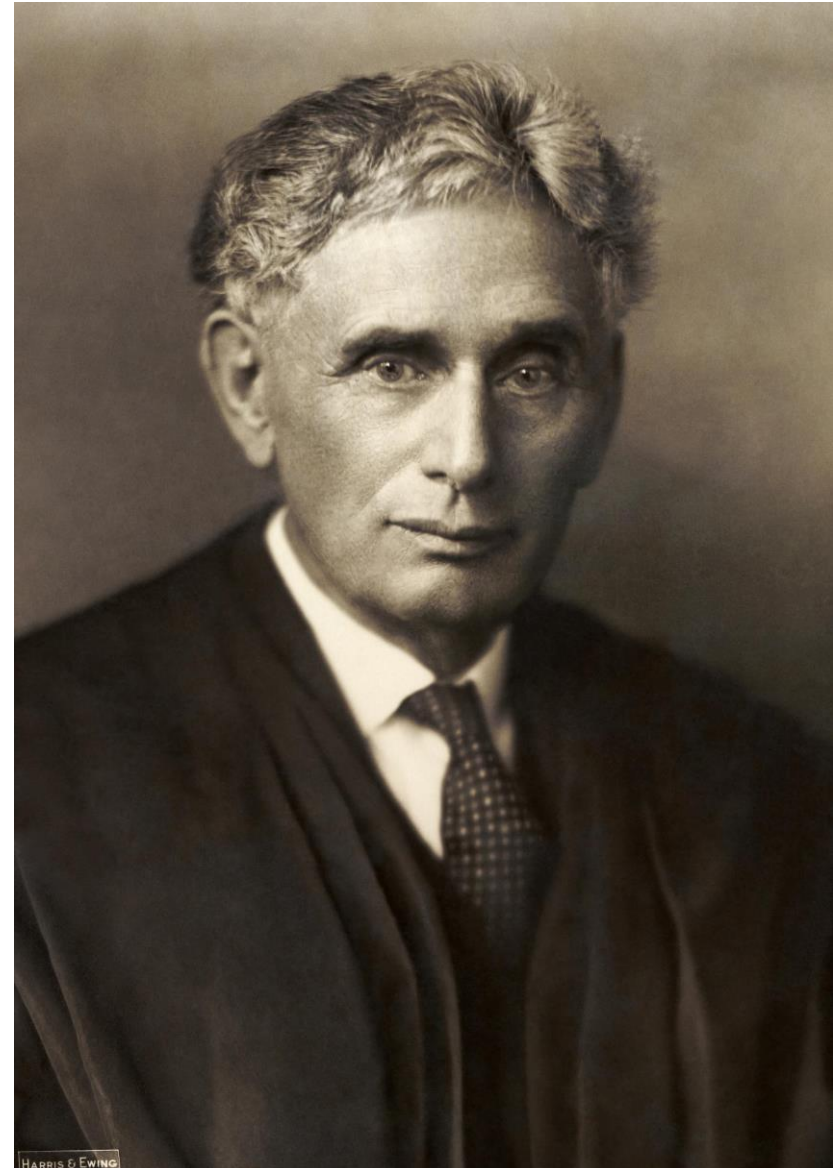
3. *Full coverage of work-related diseases, similar to that now provided for work-related accidents and injuries.* Ten States still cover only certain specified diseases.

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 66½ 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 \$70.50—the national poverty level for a nonfarm family of four.

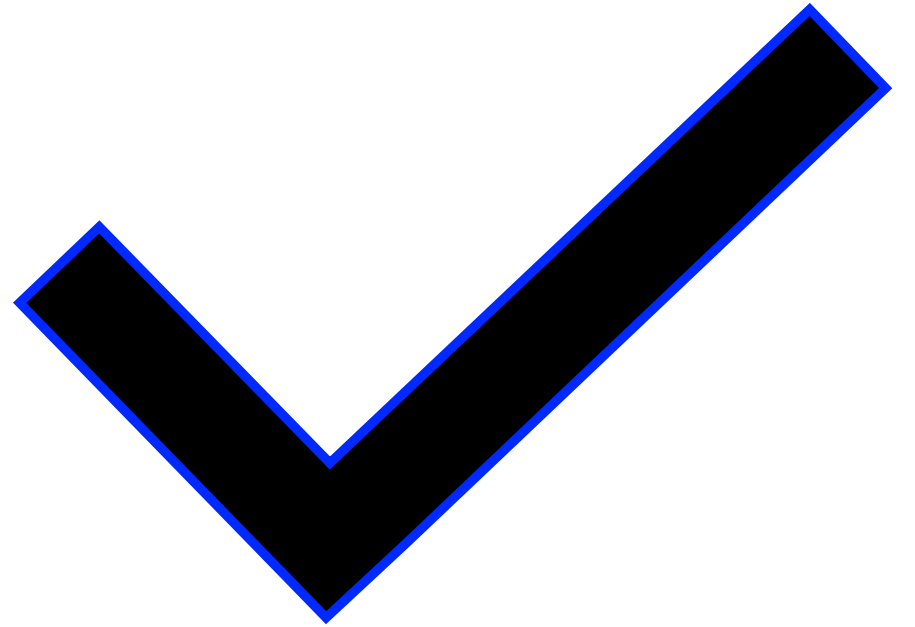
5. *No arbitrary limits on the amount or duration of benefits for permanent total disability or for death.* Nineteen States currently limit the payment of permanent disability benefits, and more than two-thirds of the States limit death benefits. Benefits should be paid for the duration of the worker's 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-



State Efforts

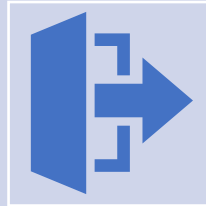








# Issues and Current Trends



Opt Out and Alternatives

Opt Out and  
Alternatives









# Alternatives to Self-Insurance

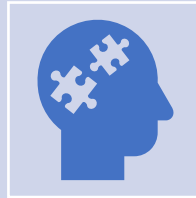
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- Group Self-Insurance
- High Deductible Policies
- SI PEOs
- Ordinary Insurance

# Issues and Current Trends



Occupational Cancer Legislation

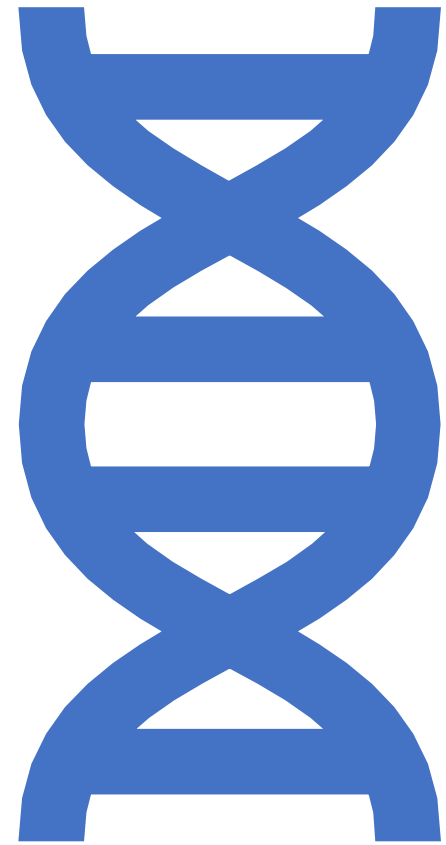


PTSD Presumption



Marijuana and Opioids

# Occupational Cancer Legislation









# PTSD Presumption





# Marijuana and Opioids





"Every so often I read a work of narrative nonfiction that makes me want to get up and preach: Read this true story! Such is Sam Quinones' astonishing work of reporting and writing." —Mary Ann Gwinn, *THE SEATTLE TIMES*

NATIONAL  
BOOK CRITICS  
CIRCLE AWARD  
**WINNER**

The True Tale of America's Opiate Epidemic

# DREAM LAND

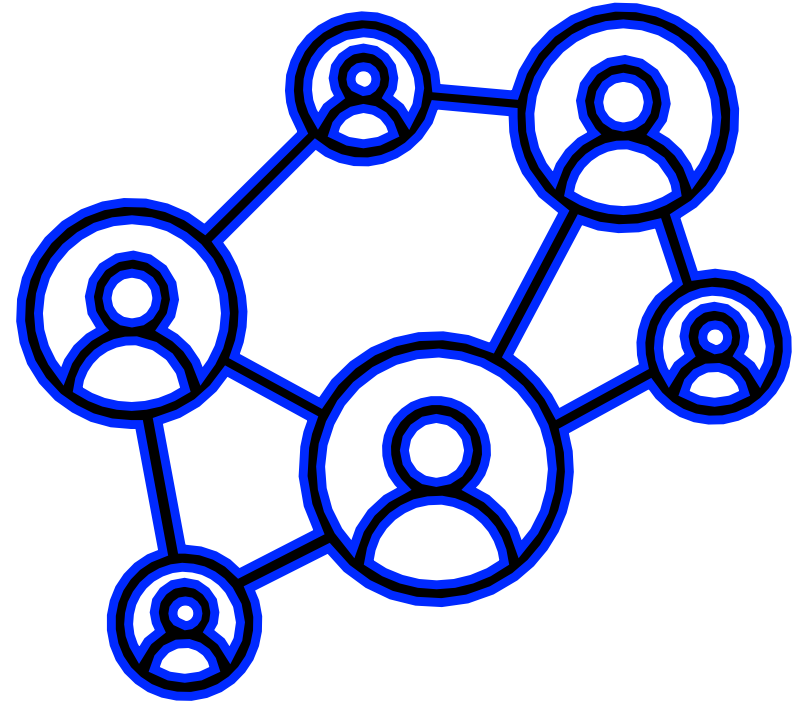
SAM QUINONES

BLOOMSBURY

WITH A NEW AFTERWORD BY THE AUTHOR



# Some Thoughts on Organizations









Thank You!

