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Occupational-Disease Legislation in the United States, 1936

With Appendix for 1937

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PREFACE

One of the most serious flaws of accident compensation systems in the United States is the failure of most State legislation to include injuries due to occupational diseases. At present, the systems in operation in 16 States, as well as those of the Federal Government and of Hawaii, Puerto Rico, and the Phillippine Islands, compensate for at least some types of occupational disease. A few make the coverage complete. The other 30 States having accident compensation systems make no such provisions. Their laws, as applied, distinguish between injuries due to sudden physical violence and those resulting from the slow ravage of disease. Thus, a miner crushed by falling rock receives compensation, but a miner who becomes a hopeless invalid because of the gradual filling of his lungs with coal dust and rock dust is excluded from compensation benefits. This is illogical and unfair. The arguments usually made for such a distinction are that in practice the inclusion of occupational diseases under workmen's compensation would involve difficulties of diagnosis and might add unreasonably to the cost of the system. The experience of those States which have actually taken the step of making all types of industrial injuries subject to compensation benefits is evidence that these objections are not very serious, or at least are not insurmountable. The subject has been discussed by experts at the national conferences on labor legislation called by the Secretary of Labor. Each of these conferences recommended that compensation acts should cover injuries due to occupational disease as well as those of a traumatic character. Silicosis and asbestosis—diseases resulting from dust inhalation—have been given particular consideration, a special conference on this subject having been held by the Secretary of Labor in April 1936.

This report deals with the history and development of occupational-disease legislation in the United States. It gives the provisions of existing laws for those jurisdictions where such laws exist, and it is to be hoped that this information will be of service to legislators and to all others who are concerned with the drafting of legislation on this subject.

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Introduction

The establishment of the principle of compensation for occupational diseases has found much slower acceptance in this country than has that of compensation for industrial accidents. At the present time workmen's compensation laws are in operation in 46 of the 48 States, but of this number only 16 States[1] compensate for occupational diseases. Coverage for occupational diseases is also extended, however, to employees under the workmen's compensation laws of the District of Columbia, Hawaii, Puerto Rico, and the Philippine Islands, and to employees covered by the Federal Employees' Compensation Act and the Longshoremen's and Harbor Workers' Act. Thus, while the subject was little considered in the workmen's compensation laws as first adopted in the United States, by a better understanding of the subject the laws have gradually been liberalized, so that now 22 jurisdictions by one method or another compensate for occupational diseases. In the remainder of the jurisdictions, occupational diseases are excluded from compensation by express language of the act, by interpretation of the courts, or otherwise. Mention should perhaps be made of the courts' interpretation by which a disease contracted gradually is classed as an accidental injury and compensation is awarded accordingly, as has occurred in the State of Maryland.

Trends in Legislation

The attention given to the general subject of compensation for occupational diseases, and especially to the specific disease of silicosis, has been widespread among the States in the past 2 years.

In Kentucky the law provided that personal injury should not include diseases (except where the disease is the natural and direct

[1] California, Connecticut, Illinois, Kentucky, Massachusetts, Minnesota, Missouri, Nebraska, New Jersey, New York, North Carolina, North Dakota, Ohio, Rhode Island, West Virginia, Wisconsin.

result of a traumatic injury by accident) nor the results of a pre-existing disease, but should include injuries or death due to inhalation in mines of noxious gases or smoke and also injuries or death due to the inhalation of any kind of gas. The law was enlarged in 1934 (ch. 89) to provide that any employers and their employees engaged in the operation of glass-manufacturing plants, quarries, and sand mines, or in the manufacture, treating, or handling of sand, may voluntarily subject themselves to the law, as regards the disease of silicosis caused by the inhalation of silica dust.

West Virginia, by a special act passed in 1935 (ch. 79), provides for payment of compensation to employees within the State who contract silicosis. A special workmen's compensation fund is set up from the premiums and other funds paid by employers electing to come under the provisions of the article. Employers who elect to make individual and direct compensation to their employees having silicosis, or the dependents of such employees, do so subject to the regulations issued by the compensation commissioner. An employee is entitled to compensation when the disease is due to the nature of an occupation or process in which he was employed at any time within 1 year previous to such disease, and when claim therefor has been made within 1 year after the last exposure to silicon dioxide dust in harmful quantities, provided, however, that the exposure shall have been over a period of not less than 2 years in the same employment in the State. A silicosis medical board, to be appointed by the commissioner, and to consist of three physicians having special knowledge of pulmonary diseases, is provided for.

Silicosis and asbestosis were included in the schedule list of compensable disease in North Carolina by an act of 1935 (ch. 123). The act provides that an employer shall not be liable for any compensation for asbestosis, silicosis, or lead poisoning, unless disablement or death results within 3 years after the last exposure to such disease, or, in case of death, unless death follows continuous disability from such disease, commencing within the period of 3 years. For the other occupational diseases on the schedule, claims must be filed within 1 year from disablement or death. The law provides for the compulsory examination of employees engaged or to be engaged in an occupation which exposes them to the hazards of asbestosis or silicosis. Compensation for disability or death from silicosis or asbestosis is not payable unless the employee has been exposed to the inhalation of dust of silica or silicates or asbestos in employment for at least 2 years, and no part of the 2-year period may have been more than 10 years prior to the last exposure.

In 1936 the New York Legislature enacted special legislation providing compensation for and looking toward the prevention of silicosis and other dust diseases (ch. 887). The law provides that there shall be added to the industrial code effective regulations governing the installation, operation, and maintenance of dust-removal systems in all industries and operations in which silica dust or other harmful dust hazard is present, and that such other regulations as will effectively control the incidence of silicosis and similar diseases shall be promulgated. Compensation will not be payable for partial disability due to silicosis or other dust diseases, but will be payable for temporary or permanent total disability or for death. An employer

is liable for the payment of compensation for these diseases when the disability results within 1 year after the last injurious exposure, or, in case of death, within 5 years following continuous disability from this cause. In enacting the article relating to the prevention of silicosis and other dust diseases, it was declared to be the policy of the legislature to prohibit, through any lawful means available, any requirement as a prerequisite of employment which compels an applicant for employment in any occupation coming within the purview of the article to undergo a medical examination. Special provision was also made for the prevention of dust hazard in the construction of public works.

The Nebraska workmen's compensation law was extended in 1935 (ch. 57) to cover occupational diseases contracted in the smelting or metal-refining industries. It is specifically provided that only diseases peculiar to these industries are covered, and that the disability must commence during the period of employment or 2 years from the termination of such employment. The law may not be construed to include contagious or infectious disease contracted during the course of employment, or death due to natural causes which occurs during working time.

A new and enlarged occupational-disease law was enacted by Illinois in 1936. Prior to that time only employees engaged in certain dangerous processes and employments had been afforded protection. By the terms of the 1936 law, the coverage is for "injury to health or death by reason of a disease contracted or sustained in the course of the employment and proximately caused by the negligence of the employer." The employer may elect whether or not he will come under its provision, but if he fails to do so, certain rights accrue to the employee. The employer may choose between two courses: (1) Liability for damage by suit, limited to those cases of disease proximately caused by the employer's own negligence; or (2) liability for compensation payments and medical benefits in all cases of true occupational disease actually attributed to the employment. Compensation for silicosis and asbestosis is especially considered under the new law. Disablement, as defined in the legislation, is compensable if it occurs within 1 year after the last day of exposure, for any occupational disease except those resulting from inhalation of silica dust or asbestos dust; in the latter cases the period is extended to 3 years from the last day of exposure.

Rhode Island's occupational-disease law adopted in 1936 (chs. 2290, 2358) extends the coverage for compensation beyond the diseases ordinarily designated under such legislation. For example, hernia, as well as disability arising from frostbite, is listed as an occupational disease.

Method of Coverage

There are three usual methods of covering occupational diseases in the workmen's compensation acts: First, by naming the specific occupational diseases which are compensable; second, by the inclusion of all occupational diseases by blanket provisions; and, third, by using the word "injury" instead of "accident" in the law.

The first method is that used in the workmen's compensation laws of several European countries, particularly England, Germany, and

Switzerland. In the United States six jurisdictions (Minnesota, New Jersey, North Carolina, Ohio, Rhode Island, and Puerto Rico) list the specific occupational diseases compensable. Of these jurisdictions, Minnesota lists 23 diseases; New Jersey, 10; North Carolina, 25; Ohio, 21; Rhode Island, 31; Puerto Rico, 15; while New York, which formerly compensated 27 specific diseases, retained the schedule in the legislation but amended the law in 1935 (ch. 254) to provide a general coverage of "any and all occupational diseases." In three States (Kentucky, Nebraska, and West Virginia) coverage is limited to one or two diseases contracted in certain employments.

Some jurisdictions, 10 in all,[2] follow the second method of allowing for compensation; that is, incorporation of blanket provisions in the laws to cover occupational disease. Exemplifying this kind of legislation is the act of Connecticut, which defines occupational disease as "a disease peculiar to the occupation in which the employee was engaged and due to causes in excess of the ordinary hazards of employment as such." Illinois makes blanket provision for compensation for industrial diseases, fixes amounts of compensation for disability, injury, or death from occupational diseases, and specifies that the industrial commission shall administer the terms of the occupational-disease act separately from that covering workmen's compensation due to injury.

The third method is of special interest in the consideration of the general subject of occupational diseases—the use of the word "injury" instead of "accident" in the law. California and Wisconsin specify that the word "injury" is to include occupational disease. The Massachusetts Legislature adopted the word "injury" in lieu of the term "accident", and the courts have held that an injury may be anything that disables a man for work. In the case of *H. P. Hood & Sons* v. *Maryland Casualty Co.* (92 N. E. 329) the court declared that an infection which a stableman had received from glanders was as much a bodily injury as though he had received a broken leg or arm by the kick of a horse. The Massachusetts court in another case (*Johnson* v. *London Guarantee & Accident Co.*, 104 N. E. 735) held that a claim for lead poisoning would be allowed as for personal injuries.

From an examination of the printed reports of the proceedings of the annual conventions of the International Association of Industrial Accident Boards and Commissions it is apparent that the administrators of workmen's compensation laws are in agreement that the complete coverage of all occupational diseases is far better than the "schedule" coverage plan. In 1929,[3] at the Buffalo, N. Y., meeting of the association, the following resolution was adopted:

> Whereas the experience of several States, including especially the States of California, Connecticut, North Dakota, and Wisconsin, reliably indicates that the cost of including all occupational injuries and disabilities is insignificant and would add not exceeding approximately 1 percent to the present insurance cost of accident disabilities: Therefore be it
>
> *Resolved*, That this association hereby recommends to the several States and Provinces the inclusion of all occupational injuries and disabilities in their compensation laws, and it does hereby place itself on record as favoring such legislation.

[2] Connecticut, District of Columbia, Hawaii, Illinois, Missouri, New York, North Dakota, Philippine Islands, the Federal Employees' Compensation Act, and the Longshoremen's and Harbor Workers' Compensation Act.

[3] See Bureau of Labor Statistics Bull. No. 511, p. 325.

The legislative committee of this association, at the meeting at Asheville, N. C., in 1935, presented a draft of two provisions covering the compensation of occupational diseases. The association accepted the report of the committee with the direction that it be sent to the various States for their study and consideration.

Consideration was given to occupational diseases by a group of experts who gathered in Washington, D. C., on February 14 and 15, 1934, at the conference on labor legislation called by the Secretary of Labor.[4] The committee on workmen's compensation recommended that the term "injuries" should include occupational diseases. It was also a part of the recommended report that a "blanket" coverage of occupational diseases was preferable to the "schedule" coverage. A second conference was called by the Secretary of Labor in 1935 [5] at Asheville, N. C., and a third in Washington, D. C., in 1936.[6] At these sessions the subject of workmen's compensation was considered, and the recommendations of the first conference on the subject of occupational diseases were approved.

At the conference on silicosis, which met in Washington on February 26, 1936, it was decided that a larger representation was necessary, so the Secretary of Labor called a national conference for April 14, 1936. Representatives of labor and industry gathered at this meeting to discuss the problems incident to the prevention and control of silicosis and other occupational dust hazards. Committees were named to study and analyze the hazard in industry and present recommendatory measures. These committees included the committee on prevention of silicosis through medicine and engineering control; committee on economic, legal, and insurance features; and the committee on the regulatory and administrative aspect of the problem.

More and more attention has been directed by legislators in recent years to this vital matter. In addition to the active consideration of the subject in the form of statutory legislation, a noticeable interest has been displayed by several States in the appointment of committees to study the general field of occupational diseases, and in particular silicosis. In 1 year—1935—Maryland, Michigan, and New Hampshire created investigative commissions to consider the subject in general, while California appointed a committee to consider silicosis. Each of these bodies was directed to report its findings to the legislature and recommend appropriate legislation. From present indications it would appear that renewed interest in the field of occupational diseases will be shown in the legislative assemblies meeting in 1937, when all but four of the States will hold regular sessions.[7]

Of special interest in the consideration of the subject of occupational diseases is the existence in 21 States of a provision requiring the reporting of occupational diseases. These States are Alabama, Arizona, Connecticut, Georgia, Illinois, Kansas, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, New Hampshire, New Jersey, New Mexico, New York, Ohio, Oregon, Pennsylvania, Rhode Island, and Wisconsin.

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[4] See Monthly Labor Review, April 1934, p. 781.
[5] See Monthly Labor Review, November 1935, p. 1261.
[6] See Monthly Labor Review, December 1936, p. 1438.
[7] For additional data see Women's Bureau (U. S. Department of Labor) Bulletin No. 147: Summary of State Reports of Occupational Diseases With a Survey of Preventive Legislation, 1932 to 1934.