Compendium on Workmen's Compensation

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Chapter 14

Administration

A law, it has been said, is only as good as its administration. Yet the administration of workmen's compensation has received far less attention than either its substantive or judicial aspects. Despite the bewildering variety of organizational and procedural patterns in workmen's compensation, many of the tasks of the several jurisdictions are similar. The following discussion compares their patterns of organization, processing of claims, time limits for filing, and statistical reporting.[1]

ADMINISTRATIVE ORGANIZATION

Workmen's compensation, as the first social insurance program to be accepted in the United States, was affected by the administrative practices and philosophy of the early twentieth century. It was to be expected that the administrative tasks initially would be judicial, in line with the view then prevalent, that the commission's main task would be the adjudication of contested claims. Such a view did not lend itself to positive administration to prevent losses, settle claims promptly, and restore the injured worker. Since then, many workmen's compensation agencies have assumed the duties of providing the injured worker with information concerning his rights and obligations under the law, providing adequate cash benefits, promoting job safety, supervising claims through the final medical and rehabilitation stages, and collecting and compiling records and statistics to determine the effectiveness of agency operations.

Forms of Organizations

While variations persist among the jurisdictions, two basic forms of administrative organization can be discerned: one headed by a single administrator responsible to the Governor, to a cabinet officer, or to an independent commission; the other managed by a commission or board responsible to the Governor. (Tables 14.1A and 14.1B.) A third and less popular type of administrative structure is court administration, still exercised in five States.

Agencies with a Single-Administrator.—The single-administrator agency, with the virtues of centralization of responsibility and authority, is used for 28 programs, including those of 23 States, the District of Columbia, 2 territories, and 2 Federal programs. In these 28 programs, 9 agencies report directly to the Governor while the other 19 are responsible to a large organizational unit, usually the State Department of Labor. The 2 Federal programs are in an office in the U.S. Department of Labor.

Despite the fact that States with commission structures slightly outnumber those with single administrators, the trend is to the single administrator. In years past, 12 States used court administration, compared to five today. Of the seven States converting to agency administration, four (Kansas, New Hampshire, New Jersey, and Rhode Island), adopted the single-administrator system. Montana, formerly with a three-member Industrial Accident Board, recently switched to a single-administrator.

Commission or Boards.—In 27 jurisdictions, the workmen's compensation law is administered by an independent commission or board, responsible to the Governor. Although they are nominally independent, some of the commissions in reality, are closely associated with the Department of Labor. States such as Alaska and Maine require the labor commissioners to serve as ex-officio members.

In the States of Delaware, Kentucky, Massachusetts, and New York, the workmen's compensation agencies are located in the Labor Department for budget purposes. (Table 14.1B.)

The commission structure, while adequate in quasi-judicial duties, does not always demonstrate the same capabilities in other administrative responsibilities. In order to provide necessary services effectively such as medical and rehabilitation supervision, many systems have found it advantageous to transfer administrative authority from the commission as a whole to the chairman. In a number of States, the chairman serves as chief administrator with other commission members serving in the capacity of hearing officers or as an appeals board. In a few States such as Connecticut,

Table 14.1—ORGANIZATION OF WORKMEN'S COMPENSATION AGENCIES

A. Agency Headed By Single Administrator

Jurisdiction	Single administrator responsible to Governor		Single administrator responsible to cabinet officer or commission	
	Name of agency and title of administrator	Term of office (years)	Major organizational unit and title of executive officer	Workmen's Compensation unit and title of executive officer
Alabama[1]			Department of industrial relations, director	Workmen's Compensation division chief.
California			Department of industrial relations, director	Division of industrial accidents, administrative director.
Colorado			Department of labor and employment executive director.	Division of Workmen's Compensation, supervisor.
District of Columbia			U.S. Department of Labor, Secretary of Labor.	Office of Workmen's Compensation programs, deputy director.
Florida			Department of commerce division of labor	Bureau of Workmen's Compensation director.
Hawaii			Department of labor and industrial relations, director.	Workmen's Compensation division administrator.
Iowa	Office of the Iowa Industrial Commissioner, industrial commissioner.	6		
Kansas	Office of Workmen's Compensation director	4		
Michigan			Department of labor, director	Bureau of Workmen's Compensation, director.
Missouri	Division of Workmen's Compensation dir.	4		
Montana			Dept. of Labor and Industry	Workmen's Compensation division administrator.
New Hampshire	Department of labor, Labor Commissioner[2]	3		
New Jersey			Dept. of labor and industry, commissioner	Division of Workmen's compensation director, and secretary.
New Mexico[1]			Labor and industrial commission, labor commissioner.	Workmen's compensation division, deputy labor commissioner
Ohio	Bureau of Workmen's Compensation, administrator.	([3] [4])		
Pennsylvania			Dept. of labor and industry, secretary	Bureau of Workmen's compensation dir.
Puerto Rico	State insurance fund, manager	6		
Rhode Island			Department of labor, director	Workmen's compensation division, chief.
South Dakota			Labor and management relations commission.	Department of labor and management relations commissioner.
Tennessee[1]			Department of labor, commissioner	Workmen's compensation division, director.
Vermont	Department of labor and industry commissioner.[2]	2		
Washington			Department of labor and industries, director	Industrial insurance division, supervision.
West Virginia	Workmen's compensation fund, commissioner.	([3] [4])		
Wisconsin			Department of industries, labor and human relations.	Workmen's compensation, division administrator.
Wyoming[1]	Workmen's compensation department, director.	4		
Virgin Islands			Department of labor, commissioner	Division of workmen's compensation deputy commissioner.
FECA			Employment Standards Administration, U.S. Department of Labor, Secretary of Labor.	Office of Federal Employees' Compensation, Director.
HWCA			Employment Standards Administration. U.S. Department of Labor, Secretary of Labor.	Office of Workmen's Compensation Programs, Director.

[1] Hearings in contested cases go directly to the courts.

[2] Responsibilities include general labor law administration.

[3] Serves at pleasure of Governor.

[4] Indefinite.

Source: Questionnaire responses received from workmen's compensation agencies.

Table 14.1—ORGANIZATION OF WORKMEN'S COMPENSATION AGENCIES—Continued

B. Agency headed by commission or board responsible to Governor

Jurisdiction	Name of agency	Number of members	Term of office (yrs.)	Chairman chosen by	Explanatory notes
Alaska	Workmen's compensation board	5	[1] 3 or 4	Governor	Commissioner of labor is chairman of the board. Agency reports to department of labor. Labor and management representation.
Arizona	Industrial Commission	5	5	do	Agency also administers general labor laws. Bipartisan repre sentation.
Arkansas	Workmen's Compensation Commission	3	6	do	Tripartite representation. Agency reports to department of social and rehabilitaton service.
Connecticut	do	8	5	do	Each Commissioner is autonomous in his district; his decisions are not reviewable by the commission.
Delaware	Industrial accident board	3	6	Rotation	Agency is located in the department of labor and industrial relations for budget purposes. Bipartisan representation.
Georgia	Board of workmen's compensation		4	Governor	Tripartite presentation.
Idaho	Industrial accident board	3	6	Rotation	Tripartite and bipartisan representation.
Illinois	Industrial Commission	5	4	Governor	Bipartisan representation in addition to labor and management representation.
Indiana	Industrial board	6	4	do	Bipartisan representation.
Kentucky	Workmen's Compensation board	5	4	do	Agency is located in the department of labor for budget purposes.
Maine	Industrial accident commission	5	[2] 4	do	Commissioner of labor and industries commissioner are members ex-officio for review purposes.
Maryland	Workmen's compensation commission	8	12	do	
Massachusetts	Division of industrial accidents	12	12	do	Agency is located in the department of labor and industries for budget purposes. Bipartisan representation statute requires one member to be a woman.
Minnesota	Workmen's Compensation Commission		6	Rotation	Members must be attorneys.
Mississippi	do		6	Governor	Labor and management representation.
Nebraska	Workmen's Compensation court		6	Judges	
Nevada	Industrial Commission		4	Governor	Labor and management representation.
New York	Workmen's Compensation Board		7	do	Agency is located in the department of labor for budget purposes.
North Carolina	Industrial Commission		6	do	
North Dakota	Workmen's Compensation bureau		6	do	Agency also administers general safety legislation and employment security. Tripartite representation.
Oklahoma	State industrial court	5	6	do	
Oregon	Workmen's compensation board	3	4	Rotation	Tripartite and bipartisan representation.
South Carolina	Industrial Commission	6	6	Governor	
Texas	Industrial accident board	3	6	do	Tripartite representation.
Utah	Industrial commission	3	6	do	Bipartisan representation.
Virginia	do	3	6	Rotation	Members elected by legislature.
Guam	Workmen's compensation commission	5	([3])	Governor	Commission consists of commissioner, medical officer law member, fiscal member, and employee member.

[1] One management member and one labor member serve 3-year terms; one management and one labor member serve 4-year terms.

[2] Chairman is appointed for a 5-year term.

[3] Indefinite.

Source: Questionnaire responses received from workmen's compensation agencies.

Nebraska, and South Carolina, the commissioners conduct hearings and adjudicate claims. Arkansas and Nevada have referees and claims examiners, respectively, to conduct the initial hearing and adjudication and their commissions serve as appellate bodies.

Court administration.—Fifty years ago, payment of cash benefits to injured workers was the main and often sole object of the administrative agency. With their expanded responsibilities, court administration as practiced by the States of Alabama, Louisiana, New Mexico, Tennessee, and Wyoming is inadequate. Four of the five States using court administration have assigned limited responsibilities to an administrative agency. (Table 14.2) Since all four State agencies utilize the single-administration system in carrying out these limited duties, they are listed also in table 14.1A. Louisiana is the only State without a workmen's compensation agency today.

Independent appeals boards.—Agencies with independent appeals boards have become more popular among the States in recent years. California, Michigan, Ohio, Rhode Island, and Colorado are among those which have changed from a com-

Table 14.2.—STATES USING COURT ADMINISTRATION AND FUNCTIONS OF WORKMEN'S COMPENSATION AGENCIES IN SUCH STATES

State	Number and name of courts	Workmen's compensation agency	Duties of agency
Alabama	33 circuit courts	Department of industrial relations; division of workmen's compensation.	Compilation of accident statistics; publication of forms and pamphlets; review of uncontested cases; receipt and filing of notices of election.
Louisiana	29 district courts	None	
New Mexico	11 district courts	Labor and industrial commission; office of the labor commissioner workmen's compensation division.	Receipt and filing of accident reports; receipt of notices of payment; conducting of hearings to obtain information needed in administration of law; filing of civil actions against noncomplying employers.
Tennessee	95 county courts	Department of labor; division of workmen's compensation.	Receipt and filing of accident reports; compilation of statistics; publication of forms; review of uncontested cases.
Wyoming	7 district courts	Office of treasurer; workmen's compensation department.	Administration of State insurance fund; publication of accident reporting forms.

Source: "Workmen's compensation: The Administrative Organization and Cost of Administration," U.S. Dept. of Labor Bureau of Labor Standards, bulletin No. 279, 1966, p. 11.

mission to a single-administrator with a separate appeals board. (Table 14.3). Such changes are in accord with the recommendation of the Council of State Governments, with the independent appeals board given review of the initial claims decisions of the administrator or hearing officers.

Appointments to the appeals boards are usually for 4- or 6-year terms. (Table 14.3) Rhode Island commissioners, appointed for twelve-year terms, serve the longest. Virgin Islands commissioners serve only 2 years. The three commissioners of the Employees' Compensation Appeals Board under the Federal Employees Compensation Act serve indefinitely.

Independent appeals boards are fairly consistent in the appointed terms of office as well as in

TABLE 14.3.—JURISDICTIONS WITH APPEALS UNIT SEPARATE FROM ADMINISTRATIVE UNIT

Jurisdiction and appeals unit	Reports to—	Number of members [1]	Term of office (years)	Explanatory notes
California: Worker's Compensation appeals board.	Department of industrial relations	7	4	5 members must be attorneys.
Colorado: Industrial committee	Department of labor and employment	3	6	Bipartisan representation.
Hawaii:				
Labor and industrial relations appeal board, city and county of Honolulu.	Department of industrial relations	3	4	Chairman must be attorney.
Industrial accident board, county of Kauai.		3	4	
Industrial accident board, county of Maui.		3	4	
Industrial accident board, county of Hawaii.		3	4	
Michigan: Worker's Compensation appeals board.	Governor	7	4	4 members must be attorneys.
Missouri: Industrial commission	do	3	6	Public member must be attorney. Tripartite and bipartisan representation.
Ohio: do	do	3	6	Tripartite and bipartisan representation. Chairman must be attorney.
Pennsylvania: Workmen's compensation board.	Department of labor and industry		4	By custom, 1 board member is attorney
Puerto Rico: Industrial commission	Governor		6	Bipartisan representation.
Rhode Island: Workmen's compensation commission.	do		12	Committee members must be attorneys with 10 year-Rhode Island practice. Bipartisan representation.
Washington: Board of industrial insurance appeals.	do	3	6	Chairman must be attorney. Tripartite representation
West Virginia.: Workmen's compensation appeal board.	do	3	6	By custom members are attorneys. Bipartisan representation.
Virgin Islands: Government employees' service commission.	do	5	2	
Federal Employees' Compensation Act: Employees' compensation appeals board.	Secretary of Labor	3	Indefinite	By custom members are attorneys.

[1] Chairman chosen by Governor except in the Virgin Islands (by member of Commission) and under FECA (by U.S. Secretary of Labor).

Source: Lloyd Larson, "The Administration of Workmen's Compensation," document No. 117, January 1972. (Revised August 1972 to conform to responses to questionnaire.)

the number who serve. Except for California and Michigan, which each have seven members, and the Virgin Islands and Puerto Rico which each have five, all independent boards have three members.

Appointment and Tenure

Length of term.—Although administrators and commissioners are usually appointed by the Governor with Senate confirmation for a specified time (Tables 14.1A and 14.1B), Hawaii and the District of Columbia select their top administrators through Civil Service. Among agencies with single administrators directly responsible to the Governor, those in Iowa and Puerto Rico have directors with six-year terms. Directors in Kansas, Missouri, and Wyoming have four-year terms. New Hampshire and Vermont administrators serve 3 and 2-year terms, respectively. The remaining single administrators serve at the pleasure of the Governor or for an indefinite time.

Variations in the length of term are widest in States with commissions. Maryland and Massachusetts commissioners are appointed for 12-year terms, the longest. Four-year and 6-year terms for the commissions are provided in 8 and 13 States, respectively. New York's commissioners serve 7 years. In Arizona and Connecticut, they are appointed for 5 years. As in many of the States with a single administrator, the five commissioners of Guam serve indefinitely. Chairmen of commissions usually are chosen or designated by the Governor. Contrary to this general procedure, five States (Delaware, Idaho, Minnesota, Oregon, and Virginia), select their Chairman by a process of succession, usually for a term of 2 years.

Although top administrators are usually appointed by the Governor for a specified period of time, nevertheless, for continuity of administration, it is advantageous to have the administrator's term expire after the Governor's. Quite often the chief official is hindered from carrying out his full responsibilities by party pressures, limited terms of office, and in some cases, statutory definitions of his specific duties.

The organizational structure in some State agencies has tended to place operating responsibilities on the administrator. Quite often he has to perform routine operations personally. Such a system may or may not function well, depending upon the size of the State and the frequency of such operations by top officials. If workmen's compensation programs are to be administered effectively, something must be done to relieve administrators of routine duties and allow time for improving services to injured workers and concerned employers.

Professional requirements.—Few formal professional requirements are required for most workmen's compensation administrators. In approximately one-third of the States, the administrator or one or more of the commissioners in the commission-type agency must be a lawyer. This requirement is more firmly established in States with the single administrator.[2] In Nevada, the chairman must have 5 years actuarial experience in addition to a masters degree in business administration or equivalent experience. At least seven of the commissions are tripartite, representing labor, management, and the general public. Eight State agencies limit the number of members who may belong to any one political party. Two of these eight agencies (Idaho and Oregon), are tripartite also.

Professional qualifications for administrators may be spelled out in the State workmen's compensation law or by civil service requirements in agencies where the position is filled by civil service selection. In some States, although no special professional qualifications are in the law, nevertheless, custom may exert practical effects. Despite the absence of formal requirements, many administrators in Connecticut, Georgia, Massachusetts, and North Carolina are attorneys. Likewise, in Rhode Island and Iowa, the administrator, by custom, is a lawyer.

Workmen's compensation agencies appear to sense a need to hire and retain qualified personnel. In 1962, the National Institute on Rehabilitation and Workmen's Compensation suggested:

> Continuing efforts should be made to achieve professional status for workmen's compensation administrators. Professional personnel should be hired only on the basis of their technical and professional qualifications. They should enjoy tenure of service and not be subject to arbitrary dismissal for reasons unconnected with the performance of their duties.[3]

Salaries.—Over the past 6 or 7 years, notable increases have been made in the salary scale of top workmen's compensation officials. Approximately one-third of the States now pay their administrators or commissioners $20,000 or more compared to $15,000 plus in 1965. The higher salary ranges are not limited to the large industrial States. At extremes of the salary scale, New York pays its chairman and other commission members the highest salaries, $38,000 and $31,500, respectively, while Delaware pays $5,000, table 14.4). Where available, salaries of appeals board members also are shown in table 14.4.

Most of the administrators or commissioners are full-time and are prohibited from engaging in outside work activities which conflict with their agency responsibilities. Some States have part-time administrators, not on full salary. A few permit outside work. Members of Alaska and Arizona commissions are part-time. In lieu of salaries, they receive $50 per diem when conducting agency business. In addition, the Alaska commissioners receive $35 subsistence for each day or part of a day on board business. States which permit top officials to do other work are Arizona, Colorado, Indiana, Kentucky, Rhode Island, and South Dakota. Of these six, four employ the officials on a full-time basis. Kentucky commissioners like those of Arizona, are employed part-time, but unlike Arizona, they receive a salary instead of a per diem.

Agency Staffing of Division Personnel

Below the directing or policy level, workmen's compensation agencies are composed of several divisions or units which carry out day-to-day operations and functions of the agency. These units are commonly assigned medical, rehabilitation, statistical, and safety duties respectively. Although variations in titles and specific duties may occur, their basic functions are similar from State to State.

Efforts to cooperate with other State agencies are common as not all compensation agencies have the diversity of resources for the functions mentioned above, notably in the areas of rehabilitation and safety. Ten of the States listed in tables 14.6 and 14.7 utilize services of the State department of vocational rehabilitation. Eighteen States em-

Table 14.4.—SALARIES OF ADMINISTRATORS

State	Agency headed by single administrator	Agency headed by commission or board	
		Chairman	Members
Alabama	$11,856 to $15,158		
Alaska		Chairman is Commissioner of Labor.	[1]
Arizona		[1]	[1]
Arkansas		$17,500	$17 500
California	$35, 000	[2] ($35, 000)	[2] ($35, 000)
Colorado	[5]		
Connecticut		$23, 500	$22, 500
Delaware		$5, 000	$5, 000
District of Columbia	$25, 583 to $33,260		
Florida	$17,436 to $24,588		
Georgia	[5]		
Hawaii	$15,000 to $24,000		
Idaho		$16,500	$16, 500
Illinois		$30, 000	$27, 000
Indiana		$17, 700	$13, 100
Iowa	$16, 500		
Kansas	$15, 000		
Kentucky			[3] $13, 200
Louisiana	[5]		
Maine		[4] $17,200	[3] $15, 500
Maryland		$24, 000	$23, 000
Michigan	$21, 500		
Massachusetts		[5]	
Minnesota		$21, 500	$21, 500
Mississippi		$19, 000	$18, 000
Missouri	$21, 000	[2] ($21,000)	[2] ($21, 000)
Montana	$19, 800		
Nebraska		$20, 000	$20, 000
Nevada		$19, 080	$17, 364
New Hampshire	Commissioner of Labor		
New Jersey	$27, 000		
New Mexico	$9, 000		
New York		$38, 000	$31, 500
North Carolina		$22, 500	$21, 830
North Dakota		$11, 500	$11, 500
Ohio	$27, 456 to $29,744	[2] ($18, 762 to $25,293)	[2] ($17, 160–$23, 234)
Oklahoma		$20, 500	$20, 500
Oregon		$22, 000	$22, 000
Pennsylvania	$16, 978 to $21,672	[2] ($14,000)	[2] ($13, 000)
Rhode Island	$10,582 to $12,584	[2] ($20,500)	[2] ($20, 000)
South Carolina		$21, 200	$19, 200
South Dakota	$15,000		
Tennessee	$10,320 to $12,240		
Texas		$19, 500	$19, 000
Utah		$15, 000	$14, 500
Vermont	$18, 300		
Virginia		$22, 500	$22, 500
Washington	$25, 000		
West Virginia	$20, 000		
Wisconsin	$12,000 to $24,000		
Wyoming	$14, 000		
Guam		[5]	
Puerto Rico	[5]		
FECA	$29,000 to $37,000		
LHWCA	$29,000 to $37,000		
Virgin Islands	[5]		

[1] Members are part time and receive $50 per diem.
[2] Figures represent salaries of appeals board members.
[3] Part-time position.
[4] Part time by statute, but duties require full-time hours.
[5] No data.

Source: Questionnaire responses received from workmen's compensation agencies.

ploy the services of the safety division in the department of labor. A few States employ outside statistical services also. A limited number have a medical staff; most have a serious need for medical directors and sufficient, qualified assistants to supervise medical care through all of its phases.

Recruitment and appointment.—Division personnel in most workmen's compensation agencies in addition to the directors include adjudicators, administrative or executive assistants, secretaries, and clerical workers. Larger State agencies which are better staffed employ medical consultants, rehabilitation specialists, and safety inspectors.

Usually, adjudicatory positions are filled by appointment by the Governor or Commission or under the civil service or merit system. Adjudicators are appointed by the Governor in Florida, Kentucky, and Missouri. Approximately 13 State agencies indicated that the administrative director or the commission does the appointing. At least nine other States (Colorado, District of Columbia, Illinois, Michigan, Hawaii, Nevada, New Jersey, Pennsylvania, and Wisconsin) select personnel through the civil service system.

In addition to the methods mentioned above, workmen's compensation agencies in several States employ other methods of recruiting employees. In Nebraska, officials give an aptitude test with the interview. In Indiana, selections are governed by the personnel hiring policy and the State personnel agency. New York and West Virginia view special qualifications of applicants. Missouri officials select personnel for political balance and capabilities. In addition to reviewing qualifications of applicants, Texas officials also give a test.

These differences in hiring procedures are of no great importance if the method used recruits a qualified staff. Whatever the selection process may be, of more significance is the principle that agencies should be staffed by competent people who are assured of job security as long as they are productive. If the agency is to meet its obligations, a concentrated effort must be directed toward retention of its experienced staff members and advancement of the most productive.

Salaries.—In order to maintain a qualified staff, the agency must provide competitive salaries in the face of enticements offered by private industry, which has drawn off much competent personnel.

The deficiencies in salaries paid to agency personnel have been offset in recent years by increases. In 1963, in 20 States, hearing examiners or persons in equivalent positions, earned a maximum annual salary of $10,000 or more. Today, although in a few agencies hearing examiners earn less than $10,000, at least 12 States pay starting salaries of $12,000 or more. The maximum salaries paid for these same positions range from $14,250 in Arkansas up to $22,584 in California (table 14.5). Five States pay a set salary in excess of $17,000. Set salaries received by full-time senior or supervisory examiners range from $16,495 in Nevada to $28,000 in New York. Senior hearing officers working in the two Federal programs receive a starting salary of $18,000 which may be extended to $33,000 or better, the highest salary paid to any examiner.

Where data were available, a comparison of current maximum salaries of hearing examiners show an increase over 1963 figures ranging from 46 to 141 percent. This figure compares favorably with the 41 percent increase in the national average weekly wage from 1963 to 1971.

Tables 14.6 and 14.7 indicate the salary scale for various personnel employed in the divisions of medical, rehabilitation, statistical information, and safety. The range is wide as is the range of hours on the job, difficulty of functions, and weight of responsibilities.

Training, instruction, and education.—According to a 1963 study by the U.S. Department of Labor, few workmen's compensation agencies offered a formal or organized program for employees for improving competence. The Workmen's Compensation Board of New York has done more in this line than any other agency. The program conducted by the New York agency includes: Training for new employees and experienced employees in all positions; educational seminars for groups of professional employees; and management studies for potential executives and managers.[4] Referees in California are offered instruction through the Division of Industrial Accidents. New Hampshire and no doubt other State agencies as well utilize the facilities of an outside source for instruction in data processing whenever there is a specific need. North Carolina and Massachusetts conduct formal training programs for their hearing reporters.

Table 14.5.—TITLES, SALARIES AND POSITIONS OF HEARING EXAMINERS, IN WORKMEN'S COMPENSATION AGENCIES, 1972

Jurisdiction	Title of position	Examiners		Senior or supervisor examiner	
		Salaries	Number of positions	Salaries	Number of positions
Alabama	(1)				
Alaska	(1)				
Arizona	Hearing officer	$13,908 to $17,784	12	$18,300 to $23,352	1
Arkansas	Referee	$12,696 to $14,250	8		
California	do	$18,576 to $22,584	102		
Colorado		$18,000	5		
Connecticut	(1)				
Delaware	(1)				
District of Columbia	Hearing officer	$7,319 to $17,305	6		
Florida	Judge of industrial claims	$22,500	22		
Georgia	Hearing examiner	No data	6		
Hawaii	Hearing officer	$11,300 to $17,600	2	$12,500 to $19,500	1
Idaho	Referee	$14,400			
Illinois	Arbitrator	$21,500	20		
Indiana	(1)				
Iowa	Hearing examiner	$12,528 to $17,628	4		
Kansas	do	$14,000	7		
Kentucky	Hearing officer	$2,340 [2]			
Louisiana	Not applicable				
Maine	(1)				
Maryland	(1)				
Massachusetts	(1)				
Michigan	Referee	$17,300 to $24,600	22		
Minnesota	Compensation Judge	$16,000 to $19,700	11		
Mississippi	Referee	$17,000	6		
Missouri	do	$21,000	9	$22,000	7
Montana	Hearing examiner	$9,000	1		
Nebraska	(1)				
Nevada	Claims examiner	$11,130	6	$16,495	2
New Hampshire	Hearing examiner	$10,150 to $12,054	1		
New Jersey	Referee	$14,031 to $20,114	12	$27,000 [3]	34
New Mexico	(1)				
New York	Referee	$19,400 to $22,200	60	$28,000	2
North Carolina	do	$17,867	6	$18,743	1
North Dakota	(1)				
Ohio	Referee	No date			
Oklahoma	(1)				
Oregon	Hearing officer	$15,000 to $19,000	15	$21,000	1
Pennsylvania	Referee	$10,500 [4]	No data		
Rhode Island	(1)				
South Carolina	(1)				
South Dakota	(1)				
Tennessee	(1)				
Texas	Hearing examiner	$14,000 and $15,000	9		
Utah	do	$11,000	2		
Vermont	(1)				
Virginia	Deputy commissioner	$13,728 to $17, 900	3		
Washington	Hearing examiner	No data			
West Virginia	do	$6, 120 [2]	4	$7,200 [2]	1
Wisconsin	do	$12,000 to $22,128	9		
Wyoming	(1)				
Guam	(1)				
Puerto Rico	(1)				
Federal Employees Compensation Act.	Claims examiner	$7,000 to $20,000	80	$18,000 to $33,000 [5]	5
Longshoremen's Act	do	$9,000 to $20,000	30	$25,600 to $33,250 [6]	13
				$18,750 to $28,500 [7]	19

[1] Agency does not have this position.
[2] Salary for part-time position.
[3] Salary for judge of compensation.
[4] $17,500 expected.
[5] Hearing and review examiner.
[6] Deputy commissioner.
[7] Assistant deputy commissioner.
Source: Questionnaire responses received from workmen's compensation agencies.

TABLE 14.6—SALARY SCALE OF DIVISION PERSONNEL, 1972

[Dollar amounts in thousands]

State	Medical		Rehabilitation	
	Director or supervisor	Other staff	Director or supervisor	Other staff
Alabama	NA	NA	NA	NA
Alaska	NA	NA	NA	[1] $16.3–19.7
Arizona	NA	[2]	NA	NA
Arkansas	NA	NA	[3]	NA
California	$23.7–28.8	[4]	$16.0–19.5	NA
Colorado	NA	NA	NA	NA
Connecticut	NA	NA	[4]	[4]
Delaware	NA	NA	NA	NA
District of Columbia	NA	NA	13.3–20.6	[4]
Florida	NA	$11.50–16.0	NA	11.5–16.1
Georgia	NA	NA	NA	NA
Hawaii	NA	[2] 13.5	[3]	NA
Idaho	NA	NA	NA	NA
Illinois	NA	NA	[3]	NA
Indiana	NA	NA	NA	NA
Iowa	[2] 1.5	----------	[1] 7.3–9.8	NA
Kansas	NA	NA	NA	NA
Kentucky	NA	NA	NA	NA
Louisiana	NA	----------	NA	---
Maine	NA	NA	9,692.8	NA
Maryland	[2] 7.5	NA	NA	8.8–11.5
Massachusetts	NA	[5]	NA	NA
Michigan	NA	NA	14.01–17.7	6.3–7.3
Minnesota	NA	NA	[3]	NA
Mississippi	NA	NA	NA	NA
Missouri	NA	NA	12.0	7.0
Montana	NA	[2] 7.5	[1] 9.0	NA
Nebraska	NA	NA	8.7–12.0	8.4–11.8
Nevada	[2] 14.5	[2] 13.5	[2] 9.0	[2] 9.0
New Hampshire	NA	NA	[4]	NA
New Jersey	NA	[4]	[3]	NA
New Mexico	NA	NA	NA	NA
New York	35.0	24.0–27.1	17.5	6.0–17.5
North Carolina	[2] 12.5	8.6	NA	NA
North Dakota	12.0	NA	8.8	6.3
Ohio	22.4–29.6	19.7–26.3	[3]	NA
Oklahoma	NA	NA	NA	NA
Oregon	28.0	NA	31.0	5.0–27.0
Pennsylvania	NA	NA	23.9–30.5	NA
Rhode Island	NA	NA	17.0	16.8–19.2
South Carolina	NA	[2] 3.3	[3]	NA
South Dakota	NA	NA	NA	NA
Tennessee	NA	NA	NA	NA
Texas	NA	[4]	NA	NA
Utah	NA	NA	NA	NA
Vermont	NA	NA	NA	NA
Virginia	[5] 7.2	NA	[3]	NA
Washington	27.3	24.7	15.2	13.1–14.5
West Vifginia	14.1	10.4	[1] 10.4	NA
Wisconsin	NA	NA	[3]	NA
Wyoming	NA	NA	[3]	NA
Guam	NA	NA	NA	NA
Puerto Rico	NA	NA	NA	NA
Federal employees Compensation Act	29.0–37.0	25.0–33.0	21.0–28.0	18.0–24.0
Longshoremen's Act	NA	NA	[6]	NA

[1] Coordinator with the department of vocational rehabilitation.

[2] $50 per diem, part-time position.

[3] Functions of position are performed by department of vocational rehabilitation.

[4] Information not available.

[5] Agency utilizes panel of private doctors to perform impartial examination in cases of medical dispute.

[6] U.S. Office of Federal Employees Compensation.

NA=Not applicable.

Source: Questionnaire responses received from workmen's compensation agencies.

TABLE 14.7.—SALARY SCALE OF DIVISION PERSONNEL IN WORKMEN'S COMPENSATION AGENCY, 1972

[Dollar amounts in thousands]

State	Statistical		Safety	
	Director or supervisor	Other staff	Director or supervisor	Other staff
Alabama	NA	[1]	[2]	NA
Alaska	NA	$8.4–10.1	[2]	NA
Arizona	NA	NA	$18.9	$8.5–19.4
Arkansas	$5.4	NA	NA	NA
California	[2]	NA	[2]	NA
Colorado	[1]	[1]	[1]	[1]
Connecticut	NA	NA	NA	NA
Delaware	NA	4.0	NA	[3] 10.0–14.2
District of Columbia	NA	7.3–9.5	[4]	NA
Florida	NA	9.2–12.7	NA	11.5–16.1
Georgia	NA	NA	NA	NA
Hawaii	[2]	NA	[3]	NA
Idaho	NA	NA	NA	NA
Illinois	12.0	NA	NA	13.0
Indiana	NA	NA	NA	NA
Iowa	NA	NA	[2]	NA
Kansas	6.6	NA	NA	NA
Kentucky	[2]	NA	[2]	NA
Louisiana	NA	----------	NA	----------
Maine	NA	NA	NA	NA
Maryland	6.0	5.5	[2]	NA
Massachusetts	NA	NA	[2]	NA
Michigan	[2]	NA	[2]	NA
Minnesota	NA	11.8–14.1	NA	14.7–19.4
Mississippi	[5]	NA	NA	NA
Missouri	NA	6.0	[2]	NA
Montana	9.0	[1]	14.5	[1]
Nebraska	8.7–12.0	4.0–5.5	[2]	NA
Nevada	16.1	6.2	15.3	5.9
New Hampshire	NA	NA	NA	[1]
New Jersey	12.1–15.8	NA	[2]	NA
New Mexico	NA	NA	NA	NA
New York	21.1	6.0–17.2	[2]	NA
North Carolina	NA	NA	8.2	5.7–6.3
North Dakota	NA	5.6	10.0	7.6
Ohio	11.8–15.5	NA	16.5–22.2	[1]
Oklahoma	NA	5.3	NA	NA
Oregon	11.0–14.0	9.00–13.0	18.0	8.0–13.0
Pennsylvania	9.0–11.5	NA	NA	NA
Rhode Island	NA	NA	[2]	NA
South Carolina	9.5	NA	9.1	NA
South Dakota	NA	NA	NA	NA
Tennessee	[2]	NA	[2]	NA
Texas	10.0	NA	NA	NA
Utah	9.0	NA	NA	NA
Vermont	NA	NA	NA	NA
Virginia	12.0–15.0	NA	[2]	NA
Washington	17.6	13.1–13.8	18.5	15.2–16.8
West Virginia	14.1	10.4	[2]	NA
Wisconsin	13.9–18.1	6.0–16.0 [6]	19.2–25.0	NA
Wyoming	NA	NA	[2]	NA
Guam	NA	NA	NA	NA
Puerto Rico	NA	NA	[1]	NA
Federal Employees Compensation Act	[7]	NA	[5]	NA
Longshoremen's Act	[7]	NA	[8]	NA

[1] No data.

[2] Duties of position performed by the Department of Labor.

[3] Position comes under the Department of Labor.

[4] Government of District of Columbia.

[5] Statistical data compiled by Commission business manager.

[6] Also, there are 7 part-time employees who receive hourly rates of $2.65 or better for approximately 25 hours of work per week.

[7] Employment Standards Administration, Division of Management Information Systems.

[8] U.S. Department of Labor, Occupational Safety and Health Administration.

NA=Not applicable.

Source: Questionnaire responses received from workmen's compensation agencies.

Although the activities mentioned here were reported as having been offered in 1963, it is reasonable to assume that such programs have expanded in recent years.

Use of Branch Offices

In response to expanding operations and a desire to improve services, many State agencies have found it advantageous to open branch offices. Branch facilities are relatively accessible to those who require the services of workmen's compensation agencies. Most agencies have a main office in the State Capital, so as to be near the Governor and parent organization or other cooperating agencies whenever the need arises.

Variations in the number and size of branch offices are apparent in Table 14.8. Of the 22 jurisdictions reporting use of branch facilities in their operations, the five agencies with the largest number of branch facilities are Florida, California, Ohio, Washington, and New Jersey. It should be noted that certain jurisdictions with branch offices have State funds which use the branch facilities as insurance claims offices. Most of the States reporting large branch facilities have successful rehabilitation programs which are strongly supported by their branch operations. States with a single branch office are Arizona, Arkansas, Colorado, Nebraska, and Wisconsin.

Table 14.8.—NUMBER OF OFFICES AND PERSONNEL IN AGENCIES WITH BRANCH FACILITIES IN ADMINISTRATION OF WORKMEN'S COMPENSATION, 1972

State	Operating branch offices	Employees
Arizona	1	8
Arkansas	1	2
California	21	524
Colorado	1	1
Connecticut	7	22
Florida	42	(1)
Hawaii	4[2]	9
Kansas	7	13
Michigan	2	27
Minnesota	2	9
Missouri	6	52
Nebraska	1	2
Nevada	3	70
New Jersey	11	64
New York	7	1,505[3]
Ohio	16	362
Oregon	5	17
Pennsylvania	2	11
Tennessee	4	4
Texas	6	34
Washington	16	445
Wisconsin	1	4
Federal Employees Compensation Act	10	362
Longshoremen's Act	14	103
Virgin Islands	1	5

[1] No data.
[2] Department of Labor branch offices.
[3] Employees in all offices.

Source: Questionnaire responses received from workmen's compensation agencies.

At least six of the responding State agencies reported that all claims could be processed to completion in certain branch offices. Wisconsin noted that certain types of claims could be processed in its branch offices. Those requiring a formal hearing, however, have to be handled through the central office. Other agencies also indicated the restricted role of branch operations in the processing of claims. In Nebraska, claims originating in the branch office are sent to the main office for completion and record control. Kansas, Florida, and New Jersey process all claims in the central office. Their branch offices are used for hearings.

Some of the advantages mentioned for branch offices include. Accessibility of claimants, attorneys, and adjusters; convenience of interested parties; accelerated adjudication of cases; and ease of attendance at hearings by claimant and employer. Disadvantages indicated by agencies with branch offices were: Lessening of control over progress of cases; delay in case transmission; difficulty in standardization of claims processing; and lack of complete statistical records.

Despite the disadvantages, branch facilities are necessary and worthwhile arms of workmen's compensation agencies. In the past, branch offices have played a major role in increasing and improving services by some State agencies, including supervision of the rehabilitation services. In the future, their role will expand.

Financing and Staffing

All interested parties connected with workmen's compensation programs, whether they are claimants, employers, or staff, suffer when funds to administer the program are inadequate. Conscientious efforts by top administrators and policy makers seek continuously to secure necessary funds on a certain and predictable basis. The need for funds to secure competent, well-qualified personnel was cited above. Only with adequate financing can the workmen's compensation agency expect to realize its several objectives. Chapter 16 discusses the costs of administering the workmen's compen-

sation program and the methods of financing the State agencies.

THE PROCESSING OF CLAIMS

The processing of claims for workmen's compensation benefits employs a diversity of practices in the various jurisdictions. Notwithstanding the absence of a uniform reporting system and the diversity of methods, certain patterns are discernible.

Processing the Uncontested Cases

The processing of workmen's compensation cases starts with the reporting of work-related injuries, diseases, or deaths. These reports form the keystone of the processing system.

First of all is a notice by the employee to the employer. This notice may be waived if the employer has actual knowledge of the event or if the employee's failure to give notice will not prejudice the employer's rights.

The next step is the filing of the first report by the employer, the initial stage of agency involvement in many jurisdictions. About half of the jurisdictions require reports of all work accidents or injuries. Other States require the reporting only of injuries or illness which caused loss of time beyond the day or shift when the impairment was observed or which required medical treatment other than first aid. A smaller group of States require the reporting only of compensable injuries (table 14.9). Louisiana alone requires no reports on work injuries.

Table 14-9.—INJURIES REPORTABLE TO WORKMEN'S COMPENSATION AGENCY BY JURISDICTIONS, 1972

Jurisdiction	Reportable injuries
Alabama	Compensation cases claimed or paid.
Alaska	All injuries or diseases causing death or disability lasting beyond day of injury or requiring medical treatment other than first aid.
Arizona	All injuries.
Arkansas	All injuries requiring the service of a doctor.
California	Disability beyond day of injury or requiring medical treatment other than first aid; death cases.
Colorado	All injuries.
Connecticut	Resulting in incapacity of 1 day or more.
Delaware	All injuries.
District of Columbia	Do.
Florida	All work-related injuries and occupational diseases.
Georgia	All accidents.
Hawaii	Absence from work for 1 day or more or requiring medical treatment beyond first aid.
Idaho	Absence from work for 1 day or more or requiring treatment by physician.
Illinois	All compensable injuries and disablements.
Indiana	Injuries and occupational diseases resulting in absence from work of 1 day or more.
Iowa	Compensable injuries.
Kansas	All injuries other than first aid.
Kentucky	Absence from work for more than 1 day.
Louisiana	None.
Maine	Loss of day's work or requiring services of physician.
Maryland	All accidents and diseases causing disability of more than 3 calendar days.
Massachusetts	All injuries.
Michigan	Injuries and diseases resulting in 7 or more days of disability; death cases; specific losses.
Minnesota	Death or serious injury and incapacity of 3 days or more.
Mississippi	All injuries.
Missouri	Do.
Montana	Do.
Nebraska	All alleged occupational injuries or diseases.
Nevada	All injuries where any compensation benefits or medical care is payable.
New Hampshire	All injuries involving a medical cost.
New Jersey	All injuries causing lost time beyond day of injury.
New Mexico	Compensable accidental injuries; claims for occupational diseases disablements.
New York	Accidents resulting in personal injury, with loss of time beyond working day, or requiring medical treatment other than 2 first aid treatments.
North Carolina	Injuries causing absence from work for more than 1 day.
North Dakota	All injuries.
Ohio	All injuries by State fund employers; compensable injuries by self-insurers.
Oklahoma	All injuries.
Oregon	Do.
Pennsylvania	Death and injury resulting in 1 day or more of disability.
Rhode Island	Fatal and injuries incapacitating for at least 3 days, or requiring medical services.
South Carolina	All injuries.
South Dakota	Do.
Tennessee	All compensable injuries and diseases.
Texas	Absence from work for 1 day or more, or medical treatment.
Utah	All injuries.
Vermont	All accidental injuries and scheduled diseases.
Virginia	All injuries causing loss of time exceeding 7 days or medical cost exceeds $100.
Washington	All injuries and occupational diseases.
West Virginia	All disabling injuries.
Wisconsin	Accidents and industrial disease causing death or disability beyond 3rd day.
Wyoming	All injuries.
American Samoa	Do.
Guam	Do.
Puerto Rico	Do.
Trust Territory	All on-the-job injuries resulting in lost time, disability, or death.
Virgin Islands	All injuries.
Federal Employees Compensation Act.	All injuries where time is lost beyond day or shift of injury, and all involving a charge against the comp. fund.
Longshoremen's Act	All injuries.

The Council of State Governments' suggested draft law recommends that employers be required to file reports of injuries or death within 15 days after the employer has notice or knowledge of a death or of an injury (or disease) which constitutes a permanent impairment, or which renders the injured person unable to perform his job dur-

ing his next regular shift. The employer is required also to keep for inspection a record of each injury reported to him or of which he has knowledge.[5]

Figure 14.1 shows several possible purposes for which the reports may be used. First, comes a screening process when many reports are discarded; second, a coding and statistical process; and finally the indexing and filing in jurisdictions which use this report as the first document in a compensation case. Many reports are used solely for statistical purposes; others are necessary for handling the claim and for surveillance.

In the screening process, officials may look for violations of safety codes, injuries to minors, or certain forms of injury or disease under study. Some may even begin to look for rehabilitation potential at this point.

The coding makes it possible to accumulate and analyze accident information for eventual distribution. This task of analysis and publication requires professionals who have knowledge of statistical procedures, the necessary perception, and sufficient time.

The several possible uses for accident reports invite conflict. If reports are to be used as the first document in the compensation case, employers may withhold useful information, lest it be used against them in a contest. According to this view, to obtain good information, data on first reports of accidents should be considered confidential and inadmissible in the event of a contest or a dispute over the amount of compensation. The data would then be used for purposes of statistical analysis and investigation but not as evidence.

Statutory penalties for failure to file serve some purposes but are no substitute for an active follow-up system. It is not possible to carry on a really first-rate report program without some sort of educational program, which in turn requires that the information garnered from the first report be analyzed and used.

The initial processing of cases, based upon the employer's first report of an injury, is the duty of the insurance carrier (public or private, as the case may be) or by the employer himself if he is a self-insurer. The insurer will investigate as necessary to assure that a compensable claim is involved. It is generally agreed that the great bulk of cases are routinely handled in a satisfactory and prompt manner, especially where the injuries are minor and only a small amount of medical or cash benefits are involved. However, some small insurers and self-insurers may lack adequate claims processing or medical management facilities in a State where their volume of business is small.

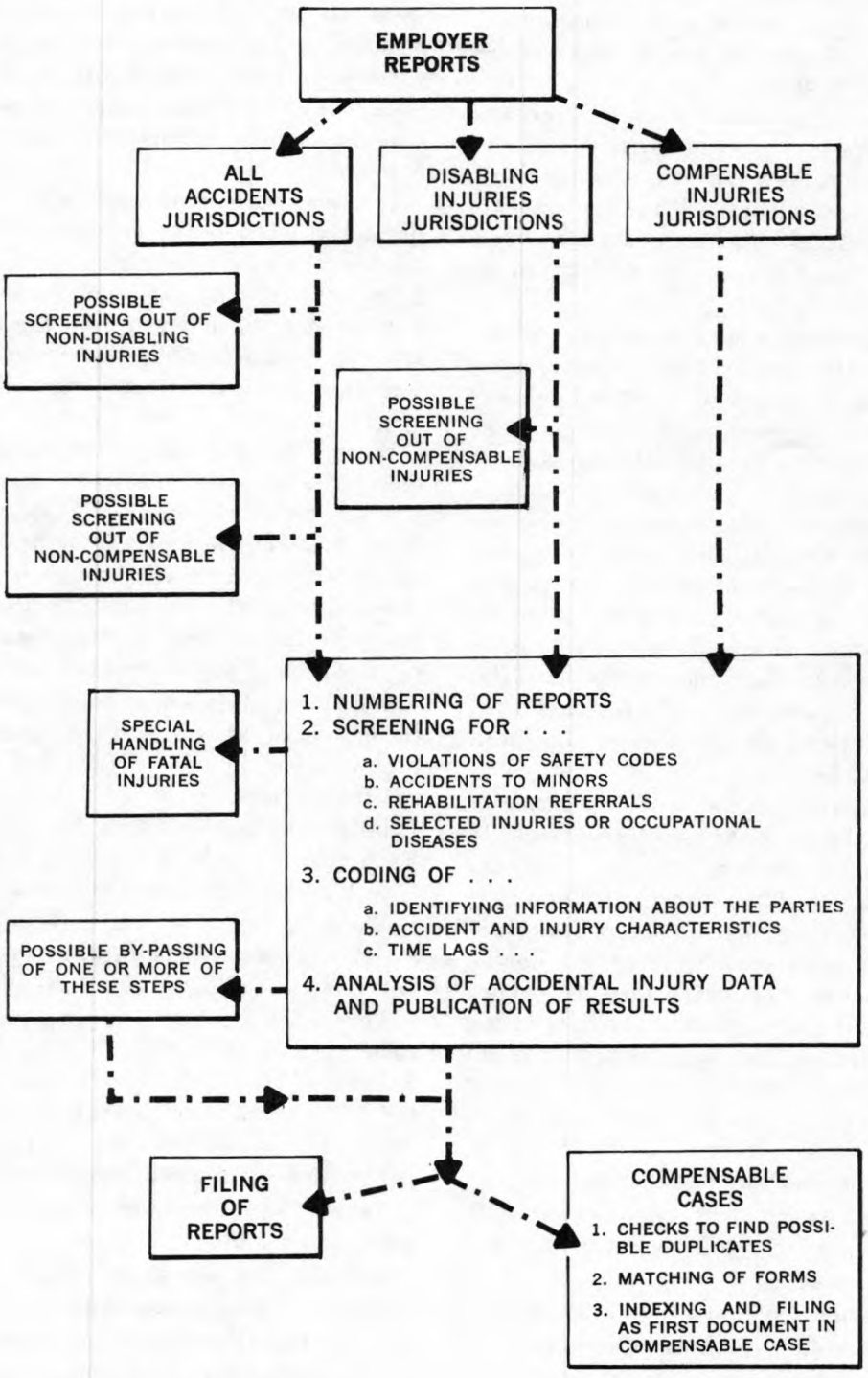
When a dispute arises for any reason, however, there is a need for administrative action on the part of some public agency. Unfortunately, such action has been lacking in some States, owing in part to the inherited assumption that the system will work automatically, will be self-administering, in effect. This original expectation of the founders of the program has not materialized.

Supervising uncontested benefit payments.—In two areas particularly lack of administration by a public body is keenly felt: In the supervision of benefit payments in uncontested cases and in the supervision of medical care and rehabilitation. Many cases are uncontested only in the sense that the insurer has not refused to accept initial liability or that the claimant has not seen fit to file a formal claim. Actually, there are several sources of honest differences between an injured worker and the insurer: The amount of cash benefits; when temporary disability ceased and the claimant was able to return to work; whether an injury has resulted in a permanent impairment. It does not impute chicanery or dishonesty to either party to suggest constant surveillance of cases in order to fulfill the intent of the law.

As Walter Dodd observed, it is the basic inequality of the parties which creates the need for impartial supervision. Because the parties are inherently so unequal, an equalizer must be introduced. If the worker files a formal claim, the equalizer may be a competent claimant's attorney. But some workers are either fearful of filing a formal claim or are not sufficiently aware of their rights to do so. And even if they were, it is much better and far less costly all around if the formal disagreements and disputes that arise in compensation programs are settled without litigation.

As Dr. Earl Steele of Ontario pointed out, the "adversary approach with its time-consuming hearings on individual cases undoubtedly militates against a broad meaningful approach by compensation agencies. Of necessity the quasi-judicial

FIGURE 14.1. Processing first reports of work injuries



(Source: *The Processing of Workmen's Compensation Cases*, op. cit., page 22).

function of the agency becomes all important, and the commonsense objective of restoring industrial casualties to useful and productive citizens is a secondary consideration." [6]

How have the agencies attempted to meet their responsibilities for supervising the uncontested cases? Dr. Monroe Berkowitz has described in detail the procedures used.[7]

Basically, there have been two general approaches, the "direct payment" system and the "agreement" system. New York has used a third approach, sometimes called the "hearings" or "calendar" approach under which cases are not closed until the parties have had an opportunity to be heard.

Under the agreement system, in effect in a majority of States, the employer or his insurer and the worker agree upon a settlement before payment is required. In some cases, the agreement must be approved by the administrative agency before payment begins. In many States, payment may be commenced voluntarily before the agreement is approved. One difficulty with this system is the length of time consumed before an agreement is reached and approved. Often a month or more lapses before a disabled employee receives his first payment. Another difficulty is that after a brief check on the arithmetic of wages and benefits, the agency does little more unless and until a formal complaint is filed.

In the direct payment States, the employer or insurer begins the payment of compensation to the worker or his dependent. The injured worker does not have to enter into an agreement and he is not required to sign any papers before compensation begins. The employer or insurer is obligated to begin payment as soon as the facts are known unless it advises the agency that it is contravening or contesting the case. Although the agency is not obligated to become involved in the case unless it is informed that the insurer is contesting the claim, the agency in some "direct payment" States actually takes a more active role than in the agreement States at this stage, by communicating with the worker and by carefully scrutinizing and auditing the reports filed.

The direct payment system is used in Wisconsin, Michigan, Minnesota, Arkansas, Mississippi, the District of Columbia, and a few other jurisdictions. It was adopted most recently in New Hampshire. Much prominence has been accorded the Wisconsin system, which has the following characteristics:

All noncontested cases are closely followed by the workmen's compensation agency through an audit not only of the first report but of supplementary reports which are required under a variety of circumstances. It is the Wisconsin philosophy that the department is obligated to see that the worker obtains whatever rights are due him under the law.

In line with this philosophy, the agency promptly seeks out the injured employee and advises him about his rights under the law. The agency depends upon the employee to report the date of the first payment. On the basis of these reports, the agency has constructed its series of reports of accidents, benefits paid, and promptness of payments.

Since Wisconsin has no State insurance fund, most cases are administered by one of the 175 insurance companies in the State. Rather than attempt to control as many as 64,000 employers, supervision is exercised through insurers, largely through the method of publicity. In some respects, publicity has proved effective, especially in promoting prompt payment of benefits.

Wisconsin officials distinguish between the clerical processing of cases and the professional activities of advising the parties. All but the most routine correspondence is handled by an attorney examiner, Wisconsin's title for a hearing officer. Each attorney examiner spends a portion of his time in the central office at this work.

The progress of a case is recorded through a so-called docket where information about a case is kept up to date by clerks in the office.

Through these methods, the agency supervises each case to protect the rights of each party. Instead of higher-than-average costs for this system, National Council statistics indicate that the State's average benefit payment per case was 27th in the country in 1968. The cost of administering the agency's program was only 1.7 percent of total payments in 1970.

Illinois, an agreement State, traditionally did little with uncontested cases and concentrated on resolving disputes at the contested level. If the case is not settled by agreement, the Commission is empowered to arbitrate disputed issues. Two re-

ports are required of the employer: A first report of injury and a so-called final report. A final report is due when the case is closed on a voluntary level. If it is reopened and contested and an award is made, the employer must file another report. This is repeated with each reopening. First reports are not followed up, as in Wisconsin, although accident analysis cards are punched. Tabulations and printouts serve as an index of reports received. From these tabulations, Illinois prepares a fairly comprehensive set of injury and compensation statistics.

Wisconsin has a relatively low percentage of cases that go to the contested level, whereas more than half the cases in Illinois, counting those settled by compromise, are contested.

The "hearing" system began in New York in 1919 after the Connor inquiry revealed striking underpayments in a sample of cases under the preceding agreement system. The system has been modified substantially in its history. Under the present New York law, "no case shall be closed without notice to all parties interested and giving to all such parties an opportunity to be heard." (Sec. 23.3(6).) Routine cases may be assigned to a motion calendar rather than a trial calendar and may be disposed of without an actual hearing unless one of the parties objects to the proposed decision.

The usual categories of "agreement," "direct payment," and "hearing" systems are not useful when the compensation agency also administers the insurance fund, whether exclusive or competitive. In these States (see ch. 15) the agency must decide whether or not to pay claims. Obviously, this is a different kind of decision than whether or not an agreement should be approved or whether or not the employer has met his obligation and paid a claim promptly.

Categories like "direct payment" and "agreement" systems do not imply that all States other than New York fit neatly into one or the other slot. As Berkowitz points out, a number like New Jersey appear to follow the agreement system but actually encourage the employer or carrier to make voluntary direct payments without waiting for an agreement to be reached. In all too many jurisdictions, according to Berkowitz "no real penalty is visited upon the carrier if it delays . . . payments; administrative concern becomes apparent only when and if the case is transferred to the contested realm." [8] Berkowitz suggests that States be classified as having "passive" or "active" administration, a distinction evident both at the opening and the closing of the cases.

Medical Care and Rehabilitation

Undue emphasis upon adjudication at the contested level has had an unfortunate effect also on provision of medical care and rehabilitation. To quote Dr. Steele:

> The control of medical aid and its various ramifications, along with the responsibility for indemnity payments, is an inherent and integral part of the compensation system and should no longer be ignored. Supervision of treatment to promote early restoration of function by properly constituted medical panels or by medical departments under the authority of the administrative agency appears to be the only logical solution . . . The authority to determine the necessity, character, and sufficiency of medical aid incorporated in the statutes and backed by strong and fair administrative practice would solve the majority of controversial medical care issues now rampant in a litigious system. It would at least help to restore the clinical approach so necessary in medical matters if compensation is to remain a vital source.[9]

In a similar vein, Dr. Henry Kessler has stated:

> Because workmen's compensation is a vast and gargantuan program of medical care, the board in each state should establish an administrative organization to deal with this problem. Most important is the lack of organizational control of the quality of medical care. There is little supervision by the administering agencies under some of the laws, and they are actually not authorized to interfere except when complaints are made. Often, they have no jurisdiction until claims are filed, which may occur long after the abuse. Ignored is the fact that care of the individual begins after he is hurt and not at the time he files a claim; and that recovery of an individual often depends on the treatment he receives immediately following the injury. In other jurisdictions, statutory authority for supervision of medical care already exists, but it has not been used by the agency.[10]

The Medical Committee of the IAIABC on numerous occasions has made similar suggestions. The American College of Surgeons issued a state-

ment of "Basic Requisites for an Adequate Compensation System" calling for medical advisory committees in each administrative agency, a medical director supported by appropriate staff with strong supervisory powers over medical care, and panels of impartial medically qualified experts.

The requirements for adequate supervision of medical care and rehabilitation are described in the pamphlet on "Medical Relations in Workmen's Compensation" issued by the Council on Occupational Health of the American Medical Association:

> . . . *Administrative Supervision.* Rehabilitation of the occupational disabled requires a competent administrative agency with full statutory authority and responsibility.
>
> The administrative agency must have more than adjudication and appeals functions; it must have an affirmative duty to see that the intent of the law is carried out. It may delegate functions, but it cannot abdicate responsibility. Proper discharge of this trust requires adequate resources in terms of qualified, permanent, professional personnel and proper facilities.
>
> Duties should include supervision of the rehabilitation process and indemnity payments for permanent disability during and following the maximum rehabilitation of the disabled employee.
>
> To assist in the administration of the law, the agency should seek the advice and active cooperation of appropriate professional, private and public organizations.
>
> The administrative agency should have a medical director, approved by the medical profession, and a qualified vocational counselor. As staff officers, they should be in charge of the administration of appropriate provisions related to the rehabilitation of the occupationally disabled and should participate in such policy-making deliberations of the agency.
>
> They should have the full support of their superiors and constantly strive to provide leadership and promote effective professional relations in their fields through the maintenance of approved professional standards and practices.[11]

Because restoration of the injured worker to a productive life is so vital to compensation, the closest possible cooperation between the agency and the medical profession is needed to realize the promise of the program.

The Contested Case

Although only a relatively small proportion of compensation cases are contested, they impose substantial demands on the system. In States where little attention is paid to uncontested cases, the proportion of contests relatively is high. In all States, both the issues and the amounts of money in contested cases generally are larger than in those not contested. Much of the time of agency employees is devoted to contested cases. Even the pace of the paperwork picks up when a case is contested.

Among hundreds of possible issues, the principal contests raise at least one of two questions: Is the employer liable? If so, what is the extent of disability?

Such issues have been the subject of uncounted administrative and judicial decisions. (See ch. 12 also.)

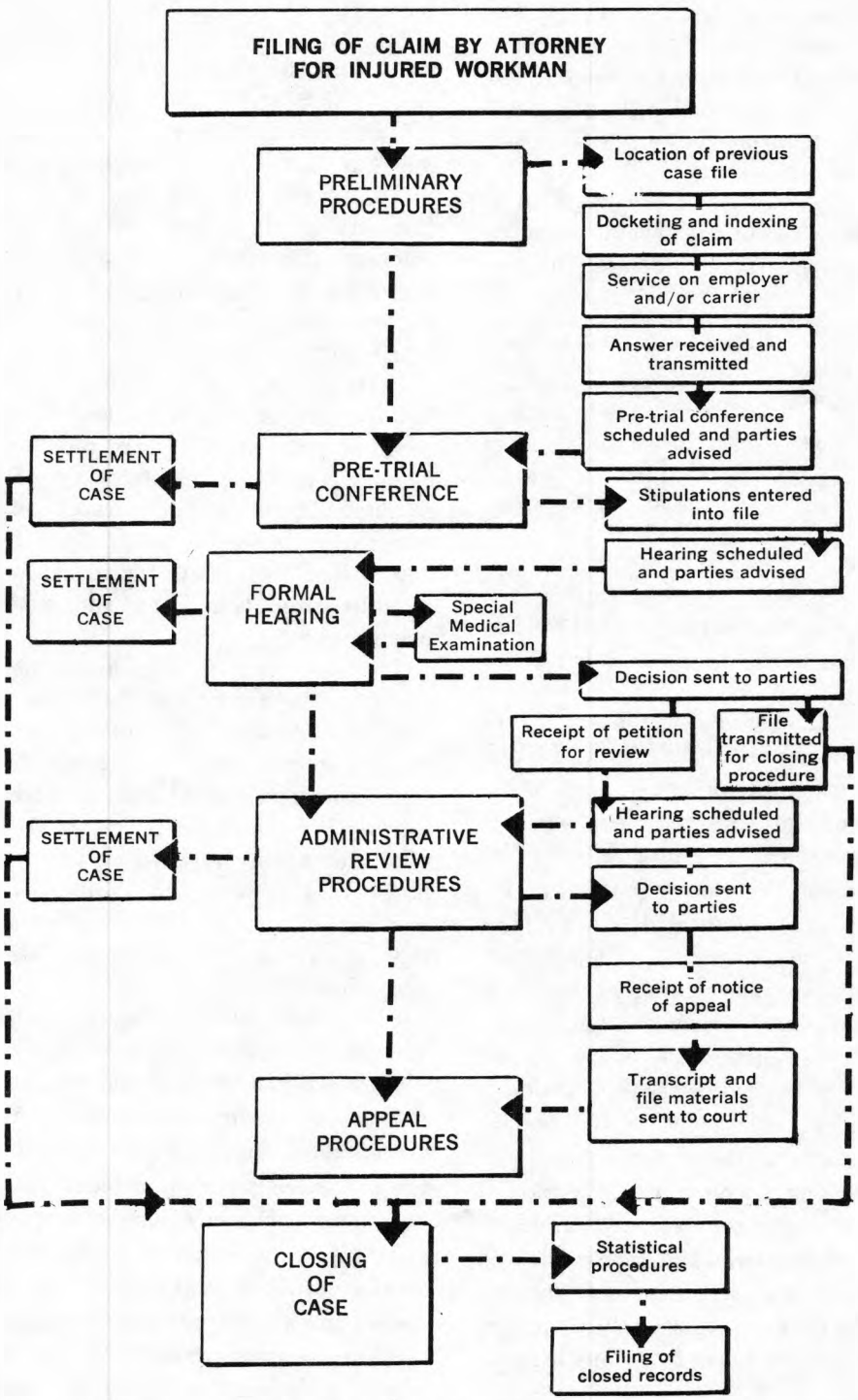
Figure 14.2 shows how contested cases may be processed. Briefly, the processing begins with the filing of a claim, usually by an attorney on behalf of an injured employee. Preliminary procedures that follow include locating the file of reports previously entered, docketing and indexing the claim, serving notice on the other party, and receiving and transmitting the answer. At this point, in a pretrial conference or other informal procedure, the agency may attempt to narrow the issues, stipulate the accepted facts, and possibly allow each side to look at the other's evidence.

A settlement may be reached at this stage, as at any other, either with no further contest or a compromise and release agreement.

The importance of pretrial conferences or other informal hearing procedures is indicated by the backlog of cases that in some States causes long delays in settlement. To avoid such delays, other States actively expedite settlements with all the resources at their command.

Pretrial conferences and informal procedures.[12]—In Massachusetts, the pretrial conference as a means of obviating formal hearings is authorized by section 7C, chapter 152, General Laws, effective October 23, 1966. Within 60 days after a request for hearing is filed with the division, a conference between the parties is held before a member of the division for the purposes of defining the outstanding issues, foreclosing dis-

FIGURE 14.2. Procedures in contested cases



(Source: *The Processing of Workmen's Compensation Cases*, op. cit., page 95).

putes or other topics, and for consideration of other relevant matters that may aid in voluntary settlement. An amendment to section 7, effective January 30, 1972, provided for a conference before a member of the Board within 28 days from the date a notice of hearing is filed to determine whether compensation is due. Either party, if aggrieved by the consequent order, may request a hearing before another member of the Board and, upon the filing of such request, the Board must hold a hearing not later than 3 months from the date of the filing of the request.

The extent and effectiveness of the State's use of pretrial conferences to obviate formal hearings during the period, 1966–70, is indicated by the record:

Year	Total requests for hearing	Pretrial cases assigned	Number settled or adjusted
1966	6,359	2,911	1,223
1967	6,690	3,839	1,876
1968	5,039	2,829	1,460
1969	5,900	2,077	1,021
1970	7,256	3,184	1,532

If the case is not resolved at the pretrial conference by a Board member, it is scheduled for a formal hearing.

A modified pretrial procedure in Florida was described in the 1966 proceedings of the IAIABC. At the call of the judge of industrial claims, the attorney or his client states for the record specific points to be covered, such as compensation, further medical treatment, temporary partial, permanent partial, or permanent total disability. The hearing is limited to issues specified. The attorney for the employer or insurance company is required to state a specific defense to the claims. Thereupon, the attorneys stipulate concurrence on every question that may be considered other than issues open for testimony; for example, whether an accident arose out of and in the course of employment. As soon as the stipulations are on record, the parties go to trial. With the witnesses readily available, the hearings are expedited and the dockets cleared as rapidly as possible. As heavy caseloads are concentrated in the Miami area, eight of the 21 judges of industrial claims serve there full time, hearing cases each day.

Wisconsin, as previously indicated, emphasizes settlement before contest. In 1970, for example, 39,088 cases were settled directly and closed at the first uncontested level covering claims in which the injured employee received medical services or cash benefits for disability or both, without a formal or informal hearing or pretrial conference. A total of 719 cases, settled directly and closed at the second uncontested level, followed an informal hearing or pretrial conference.

Many requests are received from the parties to schedule particular claims on a pretrial basis. Generally, pretrials are scheduled for a half day or full day in connection with a formal hearings calendar. Pretrials are conducted by the same examiner who holds formal hearings. A court reporter takes a dictated statement of agreements by the parties.

Pretrials are not used for bartering purposes but to evaluate the issues and to secure a settlement, if possible. They are intended to stimulate commencement or reinstatement of compensation or medical treatment. The issues are narrowed and arrangements set for an exchange of medical information. Examiners try to accomplish a settlement by stipulation. Lump-sum settlements are not encouraged.

The examiner dictates a synopsis of the conference, whether or not the issues are settled. At the 1966 IAIABC convention, the Wisconsin director reported that, in 25 percent of the pretrial conferences, payments or medical treatment or both were either initiated or resumed. In 20 percent, settlements were reached on the basis of a stipulation of the facts and amount of disability. In another 30 percent, the issues were narrowed. In the remaining 25 percent, little had been accomplished.

Since its workmen's compensation system was revised in 1965, California's agency has worked vigorously to reduce litigation. In October 1967, the use of informal procedures was authorized. As amended August 23, 1968, the law provides for the service of a notice of claim by the employee's attorney on the self-insured employer or insurer asking for admission or denial of each allegation in the notice. A reply within 15 days admits or denies the allegations to the employee's attorney. Affirmative issues or defenses may be raised in the reply; additional information may be requested

to expedite the handling of the claim. The agency provides for exchange of information, including medical reports, for proper investigation of the issues.

Unofficial informal conferences between the parties are encouraged in order to arrive at stipulated findings and an award or a compromise and release agreement without formal action. If further investigation or medical information is required, the cases are rescheduled. In the event of honest differences of opinion at the conference, the case can, of course, be litigated. For services at the conference, whether or not it culminates in a formal proceeding, a fee may be awarded to the employee's attorney.

In New Jersey, although the law does not specifically authorize informal hearings, either party or the agency may request an informal hearing before a referee with the injured worker, a representative of the employer or insurer, and a State medical examiner present usually. Following the doctor's examination of the injury, his report of findings, diagnosis, and estimate of disability is furnished to the referee who makes his recommendation as to compensation. Either party has the right to reject this recommendation and petition for a formal hearing.

The informal hearing may be requested either before or after agreement and must take place within the 2 years allowed for filing claims and before a formal claim petition is filed. Each of the major insurers usually has a day set aside for hearing its cases before informal referees at various locations. Ordinarily an applicant can secure a hearing within 2 to 4 weeks of his application. The claimant may or may not be represented by an attorney. In most cases, the discussion and recommendation will be concerned with the percentage of permanent partial disability.

As noted above, the referee's recommendation need not be accepted. If not on the day of the hearing, the employer is to notify the referee within 2 weeks of his acceptance or rejection of the recommendation. If the employer either denies liability or refuses to accept the recommendation, the referee is obliged to inform the claimant of his right "to consult an attorney at once for the protection of his rights and further to state that said attorney is not permitted to demand a fee in advance."

Conduct of formal hearing.—As indicated previously, if a settlement is not reached informally, a case is scheduled for a formal hearing and the parties are notified. At the hearing, the issues in dispute are heard; witnesses are presented, examined, and cross-examined; evidence is weighed; and decisions stated. The conduct of the hearing itself may be more or less relaxed; in many jurisdictions the formal rules of evidence usually apply; in others, these rules are only occasionally invoked. This division reflects the range of attitudes toward the formal hearing. At one end is the traditional, formalistic session where the hearing officer plays a judicial and nonparticipating role. One index to the degree of formality of a proceeding is the predominant practice of swearing witnesses before they testify.

At the other end, the hearing officer plays an active administrative role and considers it his duty to conduct an inquiry, find the facts, and decide the issue by the law, the facts, and his own experience. In Wisconsin, examiners do not hesitate to question witnesses in order to bring out facts clearly and completely, especially when the claimant has no attorney. Similarly, in New York, the hearings are informal. The referee may examine the claimant and his witnesses, as well as witnesses for the employer and insurer. Hearings are held in each of the Board's seven main offices, and at numerous additional hearing points, selected to serve the convenience of the parties and witnesses. Despite the informality, the referee's decision is deemed to be the decision of the Board unless modified or rescinded by the Board on review.

In more than three-fourths of the States, hearing officers write opinions setting forth their findings of fact and conclusions of law.

Determining the extent of disability.—To determine the extent of disability, most States rely on the adversary system, as each side presents its own medical testimony. In about three-fourths of the States, the administrative agency or a hearing officer may order an independent medical investigation in order to obtain an impartial view of the cause of impairment or disability or to determine the extent of impairment or disability. Such investigations can assist the officer in reaching a judgment especially where there is a wide disparity between the testimony of medical witnesses. In New York, the referee often will order

an independent examination as the agency has its own medical staff readily available at hearing centers. In Florida, when there is a conflict in the medical evidence, the judge of compensation has authority to designate a disinterested doctor to submit a report or to testify after review of the medical reports and evidence, examination of the claimant, or other appropriate investigation. The doctor's report or testimony is entered on the record.

Apparently, most States resort to such independent examinations infrequently. A few States (e.g., Indiana, Delaware, Michigan, and Vermont) never do.

The reliability of "impartial medical testimony" in compensation hearings is as controversial as in other personal injury claims. Although many members of the plaintiffs' bar favor the adversary method,[13] the fact that many of the States have authorized the use of impartial medical panels and independent medical examinations indicates dissatisfaction with exclusive reliance on adversary proceedings.

Several States have tried to improve control over the rating of permanent disability by their regulatory agencies. California has an elaborate machinery which gives advisory opinions upon request and formal ratings upon instructions from referees in litigated cases (see ch. 12). Wisconsin's agency reviews the determination of permanent disability by insurers or self-insurers and has the power to upset their ratings.

Oregon in 1966 established a closing and evaluation division with several committees, each composed of two lay persons and a full-time physician. Each member of the committee independently appraises cases involving permanent disability before the committee as a whole arrives at its rating. If either party objects to the rating, he may appeal to the Board for a hearing and redetermination. If it is necessary to obtain additional medical information, the workman may be called in for a personal interview or referred to a specialist or to the board's physical rehabilitation center for further examination. Claims are not closed nor permanent awards, if any, final until the workmen's physical condition is reasonably stable.

One of the greatest difficulties encountered in scheduling hearings is to assure attendance of testifying physicians. In a few States, the physician is always a key witness; in about half of the States, this situation is usual. In some metropolitan centers, some physicians spend a large part of their time in compensation proceedings. As Berkowitz says:

> In the larger hearing centers of New Jersey, a few physicians are kept busy appearing in case after case, testifying in behalf of injured workmen whom they have examined during the hours when the workmen's compensation tribunals are not in session.[14]

In an era of limited medical manpower, it is questionable whether this role of professional witness is a socially desirable function for a physician.

In 17 jurisdictions, depositions are accepted routinely in lieu of personal appearance by physicians. Nearly all jurisdictions will accept such depositions at least occasionally. Acceptance of doctors' statements without a formal oath also speeds the processing of claims.

Administrative review.—A single formal hearing subject to administrative review on appeal is not uniform practice among the States. About 33 permit an administrative review, generally either before the full commission or an independent appeals board. Although as usual there is a wide diversity, perhaps the most common review procedure allows board members to hear oral arguments. The decision and award usually is accompanied by an opinion.

The Illinois and Wisconsin operations illustrate the diversity of review procedures. In Illinois, within 15 days after an arbitration decision, either party may file a petition for review. If the petition is not filed during this period, then the arbitration decision becomes, in effect, the decision of the commission. If it is set down for review, any party may introduce new evidence at a hearing before a single commissioner or before the commissioners en banc. Oral arguments are common before the commission even though the commission will have before it a transcript of the case. Once each month, the commissioners travel down State, with each commissioner on an assigned circuit.

Although formalities preceding review by a commissioner are few, there is great need for orderly processing because of the large number of cases. Petitions for review detail the grounds for review. These petitions are received by a clerk who sets the date of hearing according to the type of cases and the preferences and expertise of the

commissioners. Stenographic aides type notices of the hearing and the daily call sheets, listing captions, docket numbers, and names of attorneys, and noting whether the matter involves a petition for review or other motion. About four new cases and two continued cases are assigned each commissioner on a typical hearing day. The chairman of the commission handles the petitions to reinstate and other unusual motions. Once a case comes before a single commissioner, it is his responsibility to set a new date if continuance is necessary. When oral arguments are to be presented before the entire commission, special scheduling procedures are necessary.

As Illinois has been revamping its procedures in recent months, its agency has been able to reduce the number of undisposed cases substantially. One way has been through enforcing its rule that cases shall be continued only if good cause is shown to the chairman of the commission or his representative. The commission has plans for extensive pretrial evaluation of all cases by its motion arbitrator.[15]

Wisconsin's procedures tend to be informal. Petitions for review have to be received within 20 days of an examiner's decision. Although a brief may be filed with a petition or perhaps with the answer, in most cases a memorandum or merely an expanded letter may serve. It is not necessary for the commission to have a transcript of the proceedings before the examiner: the examiner dictates a synopsis for the commission. Any two of the three commissioners may hear a case presented to them by the director of the division or his assistant. In 1970, 157 cases were closed following an appeal to the full commission from the findings and orders of the examiners.[16]

Usually the case is decided at that point. If there is no reversal, the director dictates the commission's order of confirmance. If the examiner's order is to be reversed and the decision set aside, time is given to the parties to ask the commission to reconsider its contemplated action before issuing its final order.

Judicial review.—Relatively few cases reach the courts after hearing and review by a workmen's compensation agency. When they do, the agency is often upheld. Yet the comparatively small number of cases eventually decided by the courts are important because through them many critical points of law are decided. Many students have noted that change in workmen's compensation has come about at least as much through court decisions as through legislation.

All the State laws but Nevada permit appeal to the State courts as a matter of right. Even in Nevada, the industrial commission can be sued in the courts. Although there is no court appeal under the Federal Employees' Compensation Act, Federal employees are not barred from appealing to courts on constitutional issues.

The scope of judicial review ranges from a trial de novo to a hearing on questions of law only. In a majority of the States, the review is either limited to questions of law or restricted by a rule that the agency's conclusions as to the facts, if based upon some measure of evidence, will not be disturbed by the courts. In five States, trial by jury is permitted.

The hearing and review by an established agency of the State government is equivalent to a trial before one of the lower State courts. Since normally, in civil actions, appeal to a higher court is limited to questions of law, it is argued that the same rule should apply to appeals in workmen's compensation cases.

Compromise and release settlements.—Compromise and release settlements are sometimes called by different names, such as lump sum redemptions or compromise agreements. Generally there are three elements to such a settlement: payment in a lump sum; a compromise between the insurer and employee on the amount of the settlement; and release of the employer and insurer from further liability.

Although much attention has focused on the first two aspects, it is really the third that is probably the most vital because injured workers may sign away their rights to continued cash benefits or medical care. Some States do not permit any such settlements; others specifically forbid workers to give up rights to medical benefits.

Unfortunately, lump sum settlements form a substantial part of compensation in some States. Periodic efforts to curb them usually produce only an addition to the backlog of contested cases.

As to the procedure, States nearly always require at least a formal approval of the settlement by the agency. In some States, a hearing is required before settlement. Generally the employee

must be informed that the settlement means a waiver of his rights to future compensation including medical care. Nevertheless, as the employee in most instances is eager to settle for what at the moment seems a large sum, such routine review procedures provide the worker with little practical protection.

The Council of State Governments proposes a restrictive provision on lump sums with no allowance for compromising an award of weekly benefits. A lump sum settlement would be permitted only when it is in the interest of the worker's rehabilitation and only when the use of a lump sum has been recommended by a rehabilitation panel. The intent of this draft law is to prevent loose distribution of large sums of cash on such vague ground as the "best interests of the claimant." [17]

TIME LIMITS ON FILING CLAIMS

All States have time limitations on filing claims for compensation. Most also specify the time for an employee to notify his employer of injury or disease. The purpose is to enable the employer to provide prompt medical treatment and investigate the circumstances of the injury. As noted elsewhere, this requirement is frequently waived if it is of no consequence.

In general, the period for filing runs either from the date of recognition of the injury or from the date of the accident. The time allowed is usually 1 or 2 years. The intent of this provision is to protect the employer against claims which are too old to be investigated or defended adequately.

Under the "injury" type of statute, there is now general agreement that the period for filing a claim runs from the time a compensable injury becomes apparent.[18] Under the "accident" type of statute, on the other hand, claims have been barred often because of late filing even though the injury itself does not disable the worker during the period allowed for filing. If a trivial incident eventually develops a serious disability, such as progressive infection following a wound, literal adherence to a restrictive claims period can deprive a worker of deserved compensation. Therefore, time limit requirements have been amended or interpreted in some jurisdictions to provide that the time for filing shall not begin to run until the date the employee should reasonably have knowledge of his disability.

Time Limits for Occupational Disease

Although the effects of an injury may be slow to develop, in general they are recognized earlier than the onset of occupational diseases, such as those resulting from exposure to dusts, ionizing radiation, fungi, or toxic, carcinogenic, or mutagenic chemicals. An employee may be unaware of such disease long after the original exposure. Even after he becomes ill, his physician may be unaware of the basic source of his disorder. More than 20 years may lapse after exposure to radiation before the damage is apparent. Therefore, the time limitation for reporting latent, occupational disease cases needs to be associated with knowledge of the etiology of the disease.

Estep and Allan divided the State requirements into four groups, by dating of the statute of limitations from: (a) "disablement" or "disability"; (b) "manifestation" of symptoms or disease; (c) diagnosis, or when a physician told the employee the disease was occupational; or (d) when the employee learned of his disabling condition and its connection with his employment.[19] Statutes also may provide alternative dates, such as the date of disablement or of employee knowledge.

In response to criticism of restrictive time limits on reporting latent injury or disease, many States have liberalized their provisions in recent years. The U.S. Department of Labor, the IAIABC, and the Council of State Governments have all published a provision based upon the date of the employee's knowledge of the disabling condition and its relation to his employment, or the date of disablement, whichever is later. The Labor Department reported in January 1972 that 24 States and Puerto Rico met such a standard.[20]

The Atomic Energy Committee in 1965 adopted a similar advisory standard, relating to filing of claims in radiation injury or disease cases. The standard reads:

> The time limit for filing a claim should start when the employee knows of his disability, that it may be radiation caused, and after disablement.[21]

The laws of 44 States, the District of Columbia and Puerto Rico met this standard as of January 1972.[22]

In addition to the time limitations for filing claims, many laws require that, to be compensable,

an occupational disease must occur within a certain period, such as 6 months or 1 year, after the last exposure or after the termination of employment. In addition, some of the laws require a minimum period of exposure before silicosis, asbestosis, and other dust diseases are compensable. A law may state that disability is not due to the nature of the occupation unless, during the 10 years preceding disablement, the employee was exposed to dust for not less than 5 years, of which 2 years must have been in the State where the claim is filed. These restrictions are subject to the same criticism as those on the time for filing claims: claims may be barred before they accrue.[23]

Compensation After Losing Common Law Action

The Council of State Governments' suggested language contains a provision for persons who unsuccessfully attempt a common law action and later claim workman's compensation. In the latter event, the period allowable for filing a claim does not begin to run until the legal action ends. This provision was based on the assumption that, although a claimant should have the privilege of bringing suit at common law if he believes that is where his remedy lies, he should not be penalized if he makes the wrong judgment concerning his remedy. The Council's draft also provides that the time for filing in the case of minors and incompetents shall not begin to run until after the date of appointment of a guardian.[24] Some of the State laws also provide for tolling the statute of limitations, such as "good cause" or payment of compensation by the employer.

STATISTICAL REPORTING

Since the earliest days of workmen's compensation, administrators have been aware of the value and need for adequate research and statistics programs.

This need has been voiced at many meetings of the International Associations of Industrial Accident Boards and Commissions. Despite valiant efforts by the Association's Statistics Committee, however, the States have failed to develop systems of compensation statistics that are either adequate or comparable. The 1971 committee asked States about the reasons for their inability to compile requested data. Most of the explanations referred to insufficient funds or limited staff. Administrators commonly lament their inability to persuade legislators to appropriate the funds necessary for an adequate statistical program.[25]

Operational and Administrative Statistics

Operational and administrative statistics serve many purposes. In addition to informing the administrators of the strong and weak spots in their operations, statistics often are crucial in persuading legislators of changes needed in the law or of additional staffing requirements. Constant appraisal of operating and evaluative statistics is vital in determining whether the program as a whole is serving its fundamental objectives. Few compensation agencies, unfortunately, have statistical programs that help them to operate at peak effectiveness, let alone to engage in program evaluation. Although some States appoint commissions to take on the job of evaluation, evaluation could proceed more effectively if States would assemble the required data.

Jean C. Powers of the California Department of Industrial Relations said:

> Three types of statistical data are highly desirable: (1) The volume of work handled, the speed with which it is handled, and the difficulties which cause delay—in short, facts concerning the efficiency of administration; (2) the practical functioning of the medical and benefit provisions of the law, that is, how the law affects injured workers; and (3) the incidence and causes of work accidents.[26]

She added:

> We find some kinds of workmen's compensation statistics compiled in nearly every State, but we find no State in which all the necessary statistics are available.[27]

Even where individual States have developed a considerable body of statistics, the figures of the various States are not comparable, owing partly to differences in the definitions used in the law, partly to differences in reporting requirements, and partly to failure to publish some of the data collected.

A good statistical reporting system would be expected to serve the needs of the administrators, legislators, and the public. As Bruce Greene stated in 1956:

> Compensation statistics should serve as a yardstick for a State to determine whether

> the workmen's compensation law is fulfilling these purposes and whether amendments to the law or changes in administrative practices may be necessary to improve its operation.[28]

Greene suggested that consideration be given to 15 types of compensation statistics, including coverage of workers, employers, and occupational diseases; medical, rehabilitation and cash benefit costs; lump-sum settlements; second-injury cases; promptness of first payments; contested cases; attorney's fees; administrative insurance costs; caseload, and extent of disability. With regard to rehabilitation, he indicated:

> Studies which would show the actual results of rehabilitation would be particularly valuable. These should involve, for example, a follow-up on actual cases to determine what the rehabilitated worker is doing five or ten years after he received his vocational training and to indicate whether he is still benefiting from the rehabilitation received. Such studies should include the wages received before and after rehabilitation, the effect of any special maintenance benefits provided under the law to encourage the injured worker to undergo rehabilitation, the effect of rehabilitation on compensation cost and the attitude of the injured worker's doctor, employer, and insurance carrier towards rehabilitation.[29]

One of the things stressed by both Powers and Greene was the desirability of developing a glossary or compilation of standard terms and definitions for use in compiling uniform compatible, or comparable sets of compensation statistics.

Administrative statistics, which are particularly useful in assessing the work of the agency staff, may cover the following items: the volume of work handled, the status of incomplete cases, time intervals in controverted cases, a record of hearings held and completed, court review, and a record of interviews and contacts. Such data, if properly used, can be revealing.

For instance, the data on workload should show the number of cases that have been reopened; the number of reopened cases will indicate whether too many cases are closed prematurely. A high number of reopenings also indicates that more time should elapse before closure, often because the worker's condition is so unstable that he needs further medical care. Reopening is expensive; moreover, many appeals arise from reopened cases.

Work Injury Reports

As Powers indicates, one of the principal uses of work injury reports involves analysis of the incidence and causes of work accidents. These data can be used in accident prevention programs, if compiled with professional competence. California publishes annual and quarterly reports on work injuries with a short text supplementing the data. The reports offer details on injuries in selected industries with emphasis on causes. Deaths from work injuries are described in detail when they offer clues to preventive or corrective action, whether behavioral or environmental. The annual reports include disabling injury frequency rates by detailed SIC codes. By timely production of a continuous series of statistics, the State built up a demand among the various industry and area groups for its analytical reports. Unfortunately, these reports are as much as 9 to 12 months old before they are published.

Several other States, such as Florida, Oregon, Montana, Ohio, Pennsylvania, New York, Wisconsin, and Illinois, have extensive accident statistics programs. Wisconsin conducted a sample survey in 1969 directed at estimating both the direct and indirect costs of work injuries. Conceived as a step toward effective accident prevention and control, the survey was based on a random sample of 687 cases of injury reported to the Department via its employers' first reports of injury. Output from the survey consisted of cost estimates by specific class of injuries, as well as their probability of occurrence.

Few States, however, have the data for computing frequency and severity rates (table 14.9). The Bureau of Labor Statistics (BLS) for years sponsored a cooperative program for reporting of accidental injuries in a number of States and was able thereby to set accident data against some comparable figure of exposure. Under the reporting requirements of the Occupational Safety and Health Act of 1970, the Bureau is establishing a program to develop useful accident data on a nationwide basis. The report form developed under the act is derived from the standard first report form suggested by the IAIABC's statistical committee in 1956.

Under the BLS program, employers subject to the Occupational Safety and Health Act (virtually all nonpublic employers) will be required

to keep extensive records of occupational injuries and illnesses. Selected establishments will report to the Bureau summaries of the data gathered under the recordkeeping procedure. A mail survey was used to collect data for the second half of 1971. The first annual survey will cover at least 200,000 establishments beginning in January 1973.

Among the items to be recorded on a supplementary record will be data on the accident or exposure which resulted in injury or illness. Although use of the supplementary form is not mandatory, all the information called for on the supplementary record must be available in some form in the establishment and be available for examination by representatives of the Department of Labor, the Department of Health, Education, and Welfare, or participating States. Nearly all the items called for are usually found on workmen's compensation or insurance forms, which may be used in lieu of the supplementary form if they contain required information. Missing items can be appended to one of these alternative forms.[30] Such efforts to collect information would be simplified if workmen's compensation data were recorded in a uniform system.

The full effect of the OSHA recordkeeping and reporting system upon statistical reporting of workmen's compensation cases has not yet been realized. Congress evidenced its concern for such reporting by instructing the National Commission on State Workmen's Compensation Laws to inquire into the desirability of a uniform reporting system.

Uniform Reporting

A study conducted for the Commission indicated that the purpose of uniform reporting is:

> To provide the information for effectively administering workmen's compensation programs including the planning, management control, and operational control of the four major system functions.[31]

Such a system would be useful first of all to the various State administrators and courts in which administrative responsibility is placed; Federal agencies, including Congress, which have an implicit interest in monitoring effective workmen's compensation programs; and other users such as employers, insurers, labor unions, and research groups.

The same report identifies three basic functions which the data should serve: administering workmen's compensation, determining accountability for the system operation, and reducing the frequency and severity of industrial accidents and injury. The quality and quantity of all data collected:

> Should be sufficient to allow for statistical analysis such as comparisons between jurisdictions; aggregations by geographical unit, industry, age, sex, injury type, etc.; time series analysis (trend analysis); and development of program achievement measures, e.g., such as percentage of wage loss compensated or the imputed cost of settlement. * * * For injury data to have any degree of meaning at a national level for policy development, there is little question that aggregations of uniform data are required. * * * [At] present the State workmen's compensation agencies have the greatest operational needs for the data while the Federal Government has need for the data for purposes of tracking the economic welfare and health of workers as a basis for developing national policy.[32]

The report points out that because of conformance with Federal requirements, uniform work injury reporting appears to be a likely possibility for a uniform national system. Unfortunately, there has been no comparable progress in reporting of administrative performance data in claims processing and adjudication, in the integration of work injury or administrative reporting with compensation delivery or loss protection functions, or in the utilization of system information for management purposes. Wide variations in statutory and administrative provisions, the lack of integration of basic workmen's compensation program functions, and the lack of conformance to recognized standards for analysis and reporting create serious drawbacks to development of uniform statistics.[33] Despite the obstacles, the authors of the report have prepared a proposed 4-year phased program to achieve such a system.[34]

Federal Program Statistics

Several private sources, such as the National Council on Compensation Insurance, the A. M. Best Co., and the Argus F. C. and S. Charts published by the National Underwriter Co., provide useful data regarding the operations of workmen's compensation insurers.

In general, however, there is a paucity of statistics about most aspects of the State workmen's compensation programs. In contrast, much data has been published on operations of some Federal benefit programs. Data are a regular byproduct of the social security program. Its information includes: (*a*) workers covered—number, sex, age, earnings, State; (*b*) beneficiaries—type of award, year of entitlement, average benefit amount, total benefits paid, benefits to dependents; and (*c*) financial and administrative data—administrative expenses, receipts and expenditures of trust funds.

The Social Security Administration also has published data on the benefit payments and beneficiaries under the black lung program.[35]

Also, as indicated in chapter 5, under the Unemployment Insurance Act the Secretary of Labor is authorized to obtain certain information from the States concerning their unemployment insurance programs. This authority has led to some uniformity in terminology and to the publication by the U.S. Department of Labor of statistics on promptness of payment, number of workers covered, benefits paid, number of workers denied benefits, and the number of workers who have used up their benefit entitlement.

The Employment Standards Administration of the U.S. Department of Labor compiles and provides certain caseload information about the operations of the Federal workmen's compensation programs. However, there are substantial gaps in the data on kinds of disabilities, promptness of payment, and attorneys' fees.

References to Chapter 14

1. Much of the information contained in this chapter is based on an administrative questionnaire mailed to workmen's compensation agencies in January 1972. Agencies receiving the questionnaire included the 50 States, American Samoa, the District of Columbia, Guam, Puerto Rico, the Trust Territory of the Pacific Islands, the Virgin Islands, and the office administering two Federal programs for Federal employees and longshoremen. Where questionnaire responses were insufficient, two major sources of reference were William O'Donnell, "Workmen's Compensation, The Administrative Organization and Cost of Administration," U.S. Department of Labor, Bulletin 279, 1966, and Monroe Berkowitz, "The Processing of Workmen's Compensation Cases," U.S. Department of Labor, Bulletin 310, 1967.
2. O'Donnell, op. cit. p. 17.
3. "Rehabilitating the Disabled Worker," U.S. Department of Health, Education, and Welfare, Vocational Rehabilitation Administration. Report of the National Institute of Rehabilitation and Workmen's Compensation, June, 1963, p. 3.
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7. Berkowitz, op cit., ch. III.
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12. Material in this passage is based on a report prepared for the Commission by Milton Brooke, "A Study of Promptness of Payment in Both Litigated and non-Litigated Cases and Adequacy of Voluntary Payments in the States of California, Florida, Massachusetts, New Jersey, New York, and Wisconsin," University of Massachusetts, March 1972.
13. 30 NACCA Law Journal 178–9, 182; 1963 IAIABC Proceedings 203–7.
14. Berkowitz, op. cit., p. 116.
15. Testimony of Alexander P. White, Chairman of the Illinois Industrial Commission, Hearings before the National Commission on State Workmen's Compensation Laws, 1972.
16. Brooke, op. cit., p. 43.
17. Council of State Governments, op. cit., pp. 49, 143–144.
18. Larson, Arthur, "The Law of Workmen's Compensation," Matthew Bender, New York, Revised 1972, p. 72.
19. Estep, Samuel D., and Walter R. Allan, "Radiation Injuries and Time Limitations in Workmen's Compensation Cases," Michigan Law Review, December 1963, pp. 259–308.
20. Alaska, Arizona, California, Connecticut, Hawaii, Indiana, Massachusetts, Michigan, Missouri, Montana, Nebraska, New Hampshire, New York, Oklahoma, Puerto Rico, Rhode Island, South Carolina, Tennessee, Texas, Utah, Virginia, Washington, West Virginia, Wisconsin, and Wyoming. Source: Chart showing "Extent of Protection under Workmen's Compensation Laws," U.S. Department of Labor, Employment Standards Administration, unpublished data, January 1972.
21. Testimony of Charles F. Eason before the National Commission on State Workmen's Compensation Laws, January 24, 1972, appendix A.
22. Alaska, Arizona, Arkansas, California, Connecticut, District of Columbia, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Louisiana,

Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Oklahoma, Oregon, Puerto Rico, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin, and Wyoming.

23. Estep and Allan, op. cit., p. 279.
24. "Workmen's Compensation and Rehabilitation Law, with Section-by-Section Commentary," Council of State Governments, Chicago, 1965, Section 26.
25. Statistics Committee Report to 57th Annual Convention of International Association of Industrial Accident Boards and Commissions, 1971, table 8. See also Berkowitz, op. cit., p. 67.
26. Powers, Jean C., "Workmen's Compensation Statistics," paper presented at the Interstate Conference on Labor Statistics, July 7–10, 1959.
27. Ibid., p. 2.
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