

# Compendium on Workmen's Compensation

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NATIONAL COMMISSION ON STATE WORKMEN'S COMPENSATION LAWS

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# Chapter 20

## Reform Within the System

As indicated in the previous chapter, many believe that workmen's compensation should be maintained as a separate system in its present basic form; that is, as a State-administered, no-fault, employer-financed program. It is conceded by almost all, nevertheless, that if a separate system is to continue, it must be improved.

### AREAS NEEDING REFORM

The areas of reform listed below, although critical, are meant to be illustrative rather than primary or inclusive. (For recommendations, see the Commission's report.)

#### Coverage

As noted elsewhere, all workmen's compensation laws in the States exclude certain employers and employments from coverage, viz, firms with fewer than two to nine employees; those not deemed "extra-hazardous"; agriculture, domestic work, and other categories of employment. Also, some laws contain elective features which permit either employers or employees to elect exemption from workmen's compensation. In total, these exclusions deny coverage to a significant proportion of the working force.

#### Medical Benefits

Although the majority of jurisdictions provide unlimited medical care, a number of laws arbitrarily limit either the dollar amount of medical services that the employer must provide or the period within which the employer must furnish medical care. Some of these jurisdictions permit extensions on the initial limitations only after affirmative action by the claimant and the administering agency.

#### Cash Benefits

The most obvious weakness in workmen's compensation laws in general is the failure to provide adequate cash benefits. Although every jurisdiction requires by statute that an injured worker have 60 to 70 percent of his average wage replaced, weekly benefits are subject to ceilings that frequently result in less than 50 percent of the State's disabled workers being paid the statutory percentage of wages. In addition, a number of jurisdictions limit either the total dollar amount of cash benefits that can be received or the duration of these benefits. Thus, for example, an individual who is permanently and totally disabled may have his cash benefits terminated after a specified time. Furthermore, even the distribution of cash benefits within the system is often inequitable, as many dollars go to workers with little or no actual wage loss or loss of wage-earning capacity while those with substantial losses often are seriously undercompensated.

#### Death Benefits

Death benefits payable to the dependents or beneficiaries of a deceased worker are subject to the same or similar weekly maxima as other income benefits and suffer from the same shortcomings. In addition, most jurisdictions, by limiting either the time period during which death benefits can be paid or the total dollar amount of benefits payable, compound the initial deficiency so common in weekly payments.

#### Administration

The original intent of workmen's compensation was to provide benefits quickly and with certainty and with little or no litigation. However, as many

State agencies do not provide positive assistance for the participants in workmen's compensation programs, it becomes extremely difficult to expedite and assure claims payments. Instead, litigation has proliferated. Once controversy arises, months may pass before a claimant finally receives the benefits due. Aside from the delay, costly controversy diverts the resources of the system from the injured worker or his beneficiaries.

#### **SUGGESTED METHODS OF IMPLEMENTING REFORMS**

It is no doubt possible to remedy many of the deficiencies noted above without completely overhauling or scrapping the workmen's compensation system. Reforms within the system to deal with these deficiencies can be accomplished in a variety of ways and at several levels.

#### **Role of the States**

States, either singly or in groups, have many opportunities to improve their laws. They can form advisory committees or panels to study workmen's compensation, to provide a forum for compromise, and to lend technical assistance in dealing with the myriad complex issues. Such groups can be ad hoc or set up under some regular and formal procedures or through an act of the legislature. The complexity of workmen's compensation suggests the need to build a corps of experienced professionals who can provide expertise in the formulation of reforms. A related means of reform would bring the various interest groups together in unofficial committees to agree upon what is needed and then jointly push for legislative change. This method was used in Pennsylvania during 1971-72 when businessmen and the labor movement joined forces to improve administration of that State's compensation law.

An important means of improvement in any State is to shed light on the system through objective research and analysis. A major impediment to analysis, however, has been the lack of hard data to confirm casual observations, hearsay, or hunch. This lack may be an important reason why State laws are inadequate. Improved data sources and availability of information are vital if States are to reform promptly and effectively.

#### **Role of the Federal Government**

Heretofore, apart from publishing recommendations for State workmen's compensation laws, evaluating compliance with the recommendations (app. A), and sponsoring research, the Federal Government has played a miniscule role in reforming the various workmen's compensation programs. Conceivably, the Federal Government could intervene to improve the compensation system within the State-administered, employer-financed structure. Seven methods that Congress could use to spur reform in the States are suggested below.

**Education and exhortation.**—One way, entailing the smallest degree of Federal involvement, would be through education and exhortation. Congress, for instance, could recommend that States adopt the Model Act or portions of it, since the Model Act is a complete structure. Because State legislatures might be reluctant to swallow the entire act, Congress could urge that the States at least follow certain recommended guidelines. This tactic would allow States a large measure of flexibility. At the same time, such guidelines could serve as a benchmark for subsequent inquiries and for comparisons among States. The ability to calculate how well States measure up to such guidelines, however, depends on the collection of data on such matters as promptness of payment, attorneys' fees, rehabilitation services provided, and so on.

Another possibility for Federal educational action is to set an example by upgrading workmen's compensation services within the Department of Labor: That is, by expanding the Department's current role in the field, by providing research grants, or by instituting programs to provide technical assistance to the States and to help train State administrators in the field. These programs could include temporary exchanges of staff between Federal and State governments. Also, the Labor Department could undertake a large-scale public information program to educate employers and employees on the various aspects of workmen's compensation.

In addition, Congress could establish a permanent Federal advisory group, similar to the one that advises the Secretary of Labor on unemployment insurance or it could recommend and help to develop the wider use of advisory groups



by the States. Finally, periodic conferences which would bring together the various interest groups from the Federal, State, and local levels would help to provide a forum for exchange of current information on workmen's compensation systems.

**Federally funded projects.**—A second major category of Federal incentives would finance and sponsor experimental and demonstration projects. Such programs would entail substantially more funding and commitment of personnel than the previously mentioned projects. Moreover, as the Federal Government already has its own compensation programs in the Longshoremen's and Harbor Workers' Compensation Act (LHWCA) and in the Federal Employees' Compensation Act (FECA), modifications in either program could be models for the States. Other such projects might include permanent disability reevaluation centers, demonstrations of new safety techniques, and so on.

**Federal grant programs.**—The Federal Government might also provide funding directly to the States to supplement operating expenses. For example, it could provide grants for administration of State programs generally or more specifically to upgrade data collection and reporting activities. The difficulty arises in determining which States should receive such grants. If grants are used to raise the quality of administration in relatively backward States, then progressive States would feel penalized for their virtue. On the other hand, rewarding progressive States with grants would tend to perpetuate differentials among the States. In Louisiana, which does not have a workmen's compensation agency, it is questionable whether there is even a sufficient operating base to use Federal funds.

A proposed policy is to develop grant programs, stipulating conditions of eligibility for the States. If this course of action is followed, a Federal office must determine whether States meet the conditions. The burden of the Federal Government will be to determine the proper mode and frequency of evaluation of State performance and the kinds of conditions or standards to be stipulated, whether they should govern only the amount of benefits or administration in general and in what detail. Further, it must be decided how much compliance (substantial versus complete) would be

required in order for a State to receive the money and how soon the State must comply.

Two other Federal grant programs were discussed in chapter 11: one for second injury funds; the other to support rehabilitation of workmen's compensation recipients.

**Subsidization through Federal tax mechanism.**—Briefly, the Federal tax systems might employ either of two procedures to improve workmen's compensation. First, if benefits in a State did not meet certain standards, the Government could deny employers in that State tax deductions for workmen's compensation premiums paid or for benefits paid by self-insurers.

On the other hand, Congress could enact tax benefits for appropriate employers who, for example, have exemplary safety records or suitable medical facilities, or a policy of hiring the handicapped. In addition, Congress could enact an investment tax credit for expenditures on safety or some variant. Conversely, a penalty tax could be levied against employers with relatively high accident rates, although there are certainly other, stronger ways to penalize employers with such a record. The Internal Revenue Service could work with the Occupational Safety and Health Administration to this end.

**Tax-expenditure schemes.**—Federal intervention that would not jeopardize the structure of the State system might be similar to the unemployment insurance tax: That is, Congress could tax payrolls or workmen's compensation premiums but return a substantial proportion of the revenue to any State that meets workmen's compensation standards. Such revenue would go to finance the State's workmen's compensation program and could be specifically for administration of the program or for providing some type of benefits. That part which is retained by the Federal Government, if any, could be used to provide assistance to the States as discussed above.

Another measure along these lines is to levy a tax on all insurers (including self-insurers and State funds) to be offset in the event the State's insurance regulatory agency can certify that they have performed research, rehabilitation, safety information, or other activities that the Congress would wish to encourage.

A third measure, similar to one mentioned above, is to tax employers but defer collection so long as

they provide benefits at least equal to Federal standards.

**Federal mandates.**—An even stronger measure would be for Congress simply to mandate that each State require all Federal contractors to provide coverage under the State's workmen's compensation statute and further provide benefits at least equal to some stipulated level, such as those provided in the Longshoremen, and Harbor Workers' Compensation Act. There would no doubt be an issue such as whether the requirement would apply to all employees for an entire year or only to certain employees for the duration of the Federal contract.

In addition, Congress could mandate universal coverage under a Federal act for all workers in firms with one or more employees unless the State already provides benefits equal to or more liberal than the Federal act. Such a mandate might entail coverage problems for certain traditionally exempt classes of workers, such as domestic and casuals. Another issue would be the difficulty in evaluating the different classes of benefits under the different acts. None of the difficulties, however, are insurmountable.

Two further measures would represent rather a strong departure from our framework of reforms within the system. One borderline measure is a mandate that would allow any employee the option of suing his employer, who would lose the traditional common law defenses, so long as the State did not meet certain standards. A second measure

that goes somewhat outside the present system is a requirement that employers buy insurance to make up any differences between the State's statutory benefit levels and those stipulated by Federal standards.

**Regulation.**—A permanent Federal agency on the order of the Federal Trade Commission or the Federal Reserve Board could regulate insurance companies and self-insurers at the national level to strengthen State workmen's compensation programs. In order to be permitted to write workmen's compensation insurance, insurers would have to meet Federal performance standards. Here again, such regulation to be effective would depend on a high quality of information and data on such events as insurer performance. The role of State funds in such a system also is unclear.

## SUMMARY

Many options are available to assist States in improving workmen's compensation. Some improvements can be generated from within the State. Other imply encouragement or prodding by the Federal Government. Some options could substantially affect the current structure of workmen's compensation in all States. Others might primarily affect those States where reform has lagged. Whatever the source, most opportunities for improving the system permit retention of the State-administered and employer-financed principles to provide insurance to employers and automatic benefits to workers with no question of fault.

APPENDIX A  
 EXTENT OF PROTECTION UNDER WORKMEN'S COMPENSATION LAWS: COMPLIANCE ON JAN. 1, 1972 WITH RECOMMENDED STANDARDS PUBLISHED BY THE U.S. DEPARTMENT OF LABOR

State	Compulsory law	No numerical exemption	Farm employment covered	Full coverage of occupational disease	Rehabilitation division in workmen's compensation agency	Maintenance benefits during rehabilitation	Full medical care for accidental injuries	Full medical care for occupational disease	Workmen's compensation agency has authority to supervise medical aid	Worker's initial choice of physician	Broad second-injury fund	Adequate time to file occupational disease claims	Waiting period for not more than 3 days with retroactive benefits after 2 weeks	Death benefits during widowhood	Permanent total disability benefits for period of disability	Temporary total disability benefits equal 2/3 State's average wage	Total standards met
Alabama.....	I	I	I	X	I	I	I	I	I	I	I	I	I	I	I	I	1
Alaska.....	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	13
Arizona.....	X	I	I	I	I	I	I	I	I	I	I	I	I	I	I	I	12
Arkansas.....	X	I	I	I	I	I	X	X	X	X	X	X	X	X	X	X	6
California.....	X	I	I	X	I	I	X	X	X	X	X	X	X	X	X	X	11
Colorado.....	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	5
Connecticut.....	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	16
Delaware.....	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	8
Florida.....	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	9
Georgia.....	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	4
Hawaii.....	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	15
Idaho.....	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	9
Illinois.....	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	6
Indiana.....	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	6
Iowa.....	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	7
Kansas.....	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	0
Kentucky.....	I	I	I	I	I	I	I	I	I	I	I	I	I	I	I	I	5
Louisiana.....	I	X	I	I	I	I	X	X	X	X	X	X	X	X	X	X	1
Maine.....	I	X	I	X	X	X	X	X	X	X	X	X	X	X	X	X	10
Maryland.....	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	12
Massachusetts.....	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	11
Michigan.....	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	11
Minnesota.....	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	11
Mississippi.....	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	5
Missouri.....	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	8
Montana.....	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	5
Nebraska.....	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	13
Nevada.....	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	8
New Hampshire.....	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	11
New Jersey.....	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	8
New Mexico.....	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	1
New York.....	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	14
North Carolina.....	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	3
North Dakota.....	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	12
Ohio.....	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	10
Oklahoma.....	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	5
Oregon.....	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	14
Pennsylvania.....	I	X	I	X	I	I	I	I	I	I	I	I	I	I	I	I	4
Rhode Island.....	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	10
South Carolina.....	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	5
South Dakota.....	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	3
Tennessee.....	I	I	I	I	I	I	I	I	I	I	I	I	I	I	I	I	2
Texas.....	I	X	I	X	X	X	X	X	X	X	X	X	X	X	X	X	6
Utah.....	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	10
Vermont.....	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	3
Virginia.....	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	5
Washington.....	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	16
West Virginia.....	I	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	13
Wisconsin.....	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	13
Wyoming.....	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	7
50 States.....	31	27	17	41	22	27	41	36	26	25	20	24	10	15	31	10	405

See footnotes at end of table.

APPENDIX A—CONTINUED

EXTENT OF PROTECTION UNDER WORKMEN'S COMPENSATION LAWS: COMPLIANCE ON JAN. 1, 1972 WITH RECOMMENDED STANDARDS PUBLISHED BY THE U.S. DEPARTMENT OF LABOR—Continued

State	Compulsory law	No numerical exemption	Farm employment covered	Full coverage of occupational disease	Rehabilitation division in workmen's compensation agency	Maintenance benefits during rehabilitation	Full medical care for accidental injuries	Full medical care for occupational disease	Workmen's compensation agency has authority to supervise medical aid	Worker's initial choice of physician	Broad second-injury fund	Adequate time to file occupational disease claims	Waiting period for not more than 3 days with retroactive benefits after 2 weeks	Death benefits during widowhood	Permanent total disability benefits for period of disability	Temporary total disability benefits equal 2/3 State's average wage	Total standards met
American Samoa.....	X	-	X	X	-	X	X	X	-	-	X	X	X	X	X	NA	11
District of Columbia..	X	X	-	X	X	X	X	X	-	X	X	-	-	X	X	NA	9
Guam.....	X	X	-	X	-	X	X	X	X	-	X	X	X	X	-	-	13
Puerto Rico.....	X	X	X	X	X	-	X	X	X	-	X	X	X	X	X	-	0
Trust Territory of the Pacific.....	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	0
Virgin Islands.....	X	X	X	X	-	X	-	-	X	X	X	X	X	-	-	NA	10
6 other "States"....	5	4	3	5	2	4	4	4	3	2	5	3	3	4	3	0	54

KEY:

- X=Law meets recommended standard.
- =Law does not meet recommended standard.

Source: Employment Standards Administration, U.S. Department of Labor. For

explanation of the standards, see U.S. Department of Labor, Employment Standards Administration, "State Workmen's Compensation Laws: A Comparison of Major Provisions with Recommended Standards," (bulletin 212, revised, 1971).



## An Act

84 STAT. 1590

To assure safe and healthful working conditions for working men and women; by authorizing enforcement of the standards developed under the Act; by assisting and encouraging the States in their efforts to assure safe and healthful working conditions; by providing for research, information, education, and training in the field of occupational safety and health; and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Occupational Safety and Health Act of 1970".

Occupational  
Safety and  
Health Act of  
1970

### NATIONAL COMMISSION ON STATE WORKMEN'S COMPENSATION LAWS

SEC. 27. (a) (1) The Congress hereby finds and declares that—

(A) the vast majority of American workers, and their families, are dependent on workmen's compensation for their basic economic security in the event such workers suffer disabling injury or death in the course of their employment; and that the full protection of American workers from job-related injury or death requires an adequate, prompt, and equitable system of workmen's compensation as well as an effective program of occupational health and safety regulation; and

(B) in recent years serious questions have been raised concerning the fairness and adequacy of present workmen's compensation laws in the light of the growth of the economy, the changing nature of the labor force, increases in medical knowledge, changes in the hazards associated with various types of employment, new technology creating new risks to health and safety, and increases in the general level of wages and the cost of living.

(2) The purpose of this section is to authorize an effective study and objective evaluation of State workmen's compensation laws in order to determine if such laws provide an adequate, prompt, and equitable system of compensation for injury or death arising out of or in the course of employment.



(b) There is hereby established a National Commission on State Workmen's Compensation Laws.

Establishment

(c) (1) The Workmen's Compensation Commission shall be composed of fifteen members to be appointed by the President from among members of State workmen's compensation boards, representatives of insurance carriers, business, labor, members of the medical profession having experience in industrial medicine or in workmen's compensation cases, educators having special expertise in the field of workmen's compensation, and representatives of the general public. The Secretary, the Secretary of Commerce, and the Secretary of Health, Education, and Welfare shall be ex officio members of the Workmen's Compensation Commission:

Membership

(2) Any vacancy in the Workmen's Compensation Commission shall not affect its powers.

(3) The President shall designate one of the members to serve as Chairman and one to serve as Vice Chairman of the Workmen's Compensation Commission.

(4) Eight members of the Workmen's Compensation Commission shall constitute a quorum.

Quorum

(d) (1) The Workmen's Compensation Commission shall undertake a comprehensive study and evaluation of State workmen's compensation laws in order to determine if such laws provide an adequate, prompt, and equitable system of compensation. Such study and evaluation shall include, without being limited to, the following subjects: (A) the amount and duration of permanent and temporary disability benefits and the criteria for determining the maximum limitations thereon, (B) the amount and duration of medical benefits and provisions insuring adequate medical care and free choice of physician, (C) the extent of coverage of workers, including exemptions based on numbers or type of employment, (D) standards for determining which injuries or diseases should be deemed compensable, (E) rehabilitation, (F) coverage under second or subsequent injury funds, (G) time limits on filing claims, (H) waiting periods, (I) compulsory or elective coverage, (J) administration, (K) legal expenses, (L) the feasibility and desirability of a uniform system of reporting information concerning job-related injuries and diseases and the operation of workmen's compensation laws, (M) the resolution of conflict of laws, extraterritoriality and similar problems arising from claims with multistate aspects, (N) the extent to which private insurance carriers are excluded from supplying workmen's compensation coverage and the desirability of such exclusionary practices, to the extent they are found to exist, (O) the relationship between workmen's compensation on the one hand, and old-age, disability, and survivors insurance and other types of insurance, public or private, on the other hand, (P) methods of implementing the recommendations of the Commission.

Study

(2) The Workmen's Compensation Commission shall transmit to the President and to the Congress not later than July 31, 1972, a final report containing a detailed statement of the findings and conclusions of the Commission, together with such recommendations as it deems advisable.

Report to  
President  
and Congress

(e) (1) The Workmen's Compensation Commission or, on the authorization of the Workmen's Compensation Commission, any subcommittee or members thereof, may, for the purpose of carrying out the provisions of this title, hold such hearings, take such testimony, and sit and act at such times and places as the Workmen's Compensation Commission deems advisable. Any member authorized by the Workmen's Compensation Commission may administer oaths or affirmations to witnesses appearing before the Workmen's Compensation Commission or any subcommittee or members thereof.

Hearings

(2) Each department, agency, and instrumentality of the executive branch of the Government, including independent agencies, is authorized and directed to furnish to the Workmen's Compensation Commission, upon request made by the Chairman or Vice Chairman, such information as the Workmen's Compensation Commission deems necessary to carry out its functions under this section.

(f) Subject to such rules and regulations as may be adopted by the Workmen's Compensation Commission, the Chairman shall have the power to—

(1) appoint and fix the compensation of an executive director, and such additional staff personnel as he deems necessary, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, but at rates not in excess of the maximum rate for GS-18 of the General Schedule under section 5332 of such title, and

80 Stat. 378.  
5 USC 101.

5 USC 5101,  
5331

Ante, p. 198-1

(2) procure temporary and intermittent services to the same extent as is authorized by section 3109 of title 5, United States Code.

(g) The Workmen's Compensation Commission is authorized to enter into contracts with Federal or State agencies, private firms, institutions, and individuals for the conduct of research or surveys, the preparation of reports, and other activities necessary to the discharge of its duties.

80 Stat. 416.  
Contract  
authorization.

(h) Members of the Workmen's Compensation Commission shall receive compensation for each day they are engaged in the performance of their duties as members of the Workmen's Compensation Commission at the daily rate prescribed for GS-18 under section 5332 of title 5, United States Code, and shall be entitled to reimbursement for travel, subsistence, and other necessary expenses incurred by them in the performance of their duties as members of the Workmen's Compensation Commission.

Compensation;  
travel ex-  
penses.

(i) There are hereby authorized to be appropriated such sums as may be necessary to carry out the provisions of this section.

Appropriation.

(j) On the ninetieth day after the date of submission of its final report to the President, the Workmen's Compensation Commission shall cease to exist.

Termination.