Compendium on Workmen's Compensation

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Chapter 7

Covered Employment Under State Workmen's Compensation Laws

Although many controversies have divided students of workmen's compensation, one point on which there is broad agreement is that coverage under the acts should be virtually if not completely universal. With few exceptions employers and workers alike agree on the desirability of this basic protection. For the employer, it represents a relatively inexpensive way to protect himself against the possibility of lawsuits for injuries to his employees. For the worker it represents an important segment of his protection against income loss.

The principle of virtually universal coverage of all gainfully-employed workers is basic. Yet even today none of the State laws meets this goal, though a few come close. Although it is believed generally that coverage has progressed and although the public has been educated on the justification for including all employment in the workmen's compensation system, for the past 20 years the proportion of covered civilian wage and salary workers included has hovered around four-fifths of the potential. Recently, it has edged up to about 83 percent, largely as a result of a shift of workers to covered employment. In 1970, according to the Social Security Administration, average weekly coverage under State and Federal workmen's compensation totaled 58.8 to 59.0 million, out of the 70.6 million civilian wage and salary workers in the country.[1]

LIMITATIONS ON COVERAGE

Most of the arguments originally brought against extension of coverage have lost their force. Nevertheless, in view of the persistence of some of the exemptions or exclusions in many State laws, a review of some of the reasons behind the original limitations may be helpful. Nearly all State acts were prepared and enacted in the face of constitutional challenges and outright opposition of certain interests. Thus, each act was the result of compromises rather than the outcome of a consistent, ideal program, even if, in some instances, much weight was given to a carefully studied plan.

Elective Laws

The early laws were hedged about with certain restrictions in order to satisfy judicial standards of constitutional orthodoxy then prevalent. For this reason, coverage was elective rather than compulsory. A 1910 New York law had been declared unconstitutional because it made coverage compulsory for certain hazardous employment. The decision had effects that still persist. The finding of unconstitutionality was based on the theory that to require an employer to pay workmen's compensation, especially where damage was not his fault, was to deprive him of "life, liberty, or property without due process of law".[2] Although compulsory coverage later was declared constitutional, many States nevertheless passed elective laws. New

York amended its constitution in November 1913 and adopted a compulsory law the same year.

Under an elective law, the employer has a choice of accepting or rejecting workmen's compensation coverage. Usually, if he rejects it, he has to notify the administraive agency in writing of this fact. If an employer does not accept coverage, he is not permitted to use any of the three commmon law defenses: assumed risk of the employment, negligence of fellow servants, and contributory negligence. Under some laws, an employee may reject coverage even though the employer accepts. In these cases, the employer would be free to use the common law defenses against claims by such an employee.

Compulsory Coverage

While most laws were elective originally, the trend has changed and now about two-thirds are compulsory. As of January 1924, only 13 States and Puerto Rico had compulsory laws for covered private employments; 31 had elective laws. (Six States and the District of Columbia still had no law at that time.) Of the laws in 28 jurisdictions, 19 are still elective. (The compulsory jurisdictions include Alaska, Arizona, Arkansas, California, Connecticut, Delaware, District of Columbia, Florida, Hawaii, Idaho, Illinois, Iowa, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Nebraska, Nevada, New Hampshire, New York, North Dakota, Ohio, Oklahoma, Oregon, Puerto Rico, Rhode Island, South Dakota, Utah, Virginia, Washington, Wisconsin, and Wyoming, two Federal acts, American Samoa, Guam, and the Virgin Islands.)

Some authorities have argued that whether a State has an elective or compulsory act is of relatively little importance because most employers prefer the advantages of workmen's compensation coverage to the uncertainty and risk of rejecting the act. Some States with elective laws, such as New Jersey and Pennsylvania, have achieved a high level of coverage through a presumption of coverage in the absence of specific notice of rejection. Even if the number of workers denied protection is small, however, the hardship for these few workers could be severe. With its constitutionality now well accepted, coverage should be compulsory in all States.

In a few jurisdictions, the laws are in part compulsory and in part elective. For example, some are elective as they apply to private employers but compulsory as to the State or other public employers. Others are elective for most employers but compulsory as to coal mining or other specified extra-hazardous work.

Voluntary Coverage

In most States, employment exempted from compulsory or elective coverage may be brought under the law through voluntary acceptance on the part of the employer. Unlike elective coverage, the employer does not lose his common-law defenses if he does not accept voluntary coverage. Thus, a compensation law may be either compulsory or elective in its application as to certain employment and voluntary as to others.

Limiting Coverage to Specified Hazardous Employment

Another expedient employed in early acts, in order to bring the legislation within the police powers of the State and thus assure its constitutionality, was to declare the law applicable only to specified hazardous or extra-hazardous employment. Seven laws still apply compulsory coverage only to certain so-called hazardous occupations: Illinois, Kansas, Louisiana, Montana, New Mexico, Oklahoma, and Wyoming.

In the beginning, most of the occupations listed in such laws were mining, lumbering, manufacturing, or transporting of dangerous explosives, construction of telephone, telegraph, and electric powerlines, and similarly dangerous occupations. The lists, however, have been broadened. Some of the jobs classed as hazardous in some of the present laws include occupations not generally considered so: e.g., outside salesmen, musicians at hotels or theaters, janitors, dishwashers in restaurants, public school teachers, and employment by a hotel, laundry, bakery, municipal corporation, or State.

Numerical Exemptions

Another frequent excuse for limiting coverage was administrative convenience. Many employers were exempted because they had a small number of workers, despite the fact that such employers frequently lack adequate safety programs or the financial resources to protect themselves or their workers in the event of a serious injury. As ex-

perience has shown that these employers can be covered without great administrative difficulty, States have been reducing or eliminating such exemptions. Still, as of January 1, 1972, almost half of the State laws exempt employers having fewer than a specified number of employees (table 7.1). The exemptions apply generally where there are fewer than 2, 3, 4, or 5 employees but in four States the number is from 8 to 15 employees. Two of these cut the number in 1972: South Carolina from 15 to 6; Mississippi from 8 to 5. One criticism of this type of exemption is that some employers may be tempted to ignore possible economies of larger scale production in order to retain the supposed advantage of the exemption.[3]

Table 7.1.—DISTRIBUTION OF JURISDICTIONS BY THE NUMBER OF EMPLOYEES PERMITTED AN EMPLOYER WHO QUALIFIES AS A SMALL BUSINESS FOR EXEMPTION FROM WORKMEN'S COMPENSATION, 1972

No exemption: Alaska, California, Colorado, Connecticut, District of Columbia, Hawaii, Idaho, Illinois,[1] Indiana, Iowa, Louisiana, Maryland, Michigan,[2] Minnesota, Montana, Nebraska, Hew Hampshire, New Jersey, New York, North Dakota, Oregon, Pennsylvania, Puerto Rico, South Dakota, Utah, Washington, West Virginia, Wisconsin,[3] Wyoming, United States of America.

Number of employees permitted before coverage is compulsory:

1_____ Nevada, Oklahoma.
2_____ Arizona, Delaware, Florida, Kansas,[4] Kentucky, Ohio, Texas, Vermont.
3_____ Alabama, Maine, Massachusetts,[5] New Mexico,[6] Rhode Island.
4_____ Arkansas,[7] North Carolina,[8] Tennessee, Virginia.
7_____ Mississippi, Missouri [9].
9_____ Georgia.
14____ South Carolina.

[1] Illinois: A numerical exemption of 2 or less employees applies for "carriage by land, water, or aerial service and loading or unloading in connection therewith * * *"

[2] Michigan: A numerical exemption of 2 or less employees applies unless at least 1 is employed for 35 hours per week for 13 consecutive weeks by the same employer.

[3] Wisconsin: Employers other than farmers who usually have less than 3 employees but who have paid wages of $500 or more in any calendar quarter for services performed in the State are covered the 1st day of the next calendar year.

[4] Kansas: Numerical exemption does not apply to employment in mines and building construction.

[5] Massachusetts: The numerical exemption does not apply to occupations determined by the Commissioner to be hazardous, nor to farm labor.

[6] New Mexico: Does not apply if injury occurs upon any structure 10 feet or more above the ground.

[7] Arkansas: Contractor engaged in building or building repair work is covered if he employs 2 or more employees at any one time. If contractor subcontracts any portion of work, contractor is covered if either the contractor or subcontractor has only 1 employee.

[8] North Carolina: Act exempts individual sawmill and logging operator with less than 10 employees whose principal business is unrelated to sawmills and logging and who operate less than 60 days in 6 consecutive months.

[9] Missouri: If the Division of Workmen's Compensation finds that an employer of fewer than 8 employees is engaged in hazardous employment, such employer shall be covered unless he rejects act within 10 days of such finding.

Exemption of Farmworkers

Farmworkers have always constituted one of the largest blocs of exempted employees. In 25 States and Puerto Rico, the law requires some coverage of agricultural workers but as of January 1, 1972, only 18 jurisdictions cover such workers in approximately the same manner as other employees. (table 7.2) Pennsylvania covered farmworkers in 1972. A substantial number of agricultural workers have been covered voluntarily.

Table 7.2.—JURISDICTIONS WHERE WORKMEN'S COMPENSATION LAWS APPLY TO AGRICULTURAL WORKERS, 1972

Jurisdiction [1]	Kinds of agricultural workers covered	Compulsory (C) or elective (E) coverage	Number of employees permitted before coverage is compulsory
Alaska	All except those employed on a part-time basis.	C	None.
Arizona	Only those employed in the use of machinery.	C	3.
California	No express exemption of farmworkers; all are covered as other workers.	C	None.
Colorado	Employed more than 6 months during any 12-month period.	E	4.
Connecticut	All covered as other workers	C	None.
Florida	All except those performing agricultural labor on a farm in the employ of a bona fide farmer or association of farmers employing 9 or fewer regular employees and fewer than 20 other employees at one time for seasonal employment as defined.	C	See col. 2.
Hawaii	All covered as other workers	C	None.
Illinois	All except those whose employer employs less than 500 man-days of agricultural labor during any calendar quarter during the preceding calendar year. The law does not apply to exchange and family help and laborers employed on a piece-rate basis in agriculture less than 13 weeks during the preceding calendar year.	C	See col. 2.
Kentucky	Operators of threshing machines used in threshing or hulling grain or seeds.	E	3.
Louisiana	Operators of harvesting machinery and threshing machinery.	E	None.
Maine	All except seasonal or casual	E	4.
Maryland	Those whose employer has 3 or more full-time employees or a yearly payroll for his full-time employees of $15,000. Non-machine-operating migratory laborers, and office workers are excluded.	C	See col. 2.
Massachusetts	All covered as other workers	C	None.
Michigan	Those whose employer employs 3 or more regular employees 35 or more hours a week for a period of 13 or more weeks during the preceding 52 weeks. Coverage applies only to such regular employees.	C	See col. 2.
Minnesota	Commercial threshermen and commercial balers.	C	None.
Hew Hampshire.	Those whose employer employs more than 2 employees.	C	See col. 2.
New Jersey	All covered as other workers	E	None.
New York	Requires workmen's compensation coverage of farm laborers for 12 months from Apr. 1, if the farmer's total cash wage payments during the preceding calendar year amounts to $1,200 or more; farmworkers supplied to farmer by a farm labor contractor are deemed employees of the farmer	C	Do.

See footnotes at end of table.

Table 7.2.—JURISDICTIONS WHERE WORKMEN'S COMPENSATION LAWS APPLY TO AGRICULTURAL WORKERS, 1972—Continued

Jurisdiction [1]	Kinds of agricultural workers covered	Compulsory (C) or elective (E) coverage	Number of employees permitted before coverage is compulsory
Ohio	All covered as other workers	C	3.
Oregon	All covered as other workers	C	None.
Puerto Rico	All covered specifically as other workers.	C	Do.
South Dakota	Commercial operators of threshing machines, grain combines, corn shellers, cornhuskers, shredders, silage cutters, and seed hullers.	C	Do.
Vermont	All covered as other workers.	E	3.
Washington	All except those who earn less than $150 per calendar year from 1 employer.	C	None.
Wisconsin	Those whose employer has 6 or more employees, whether in 1 or more locations, on 20 or more days during the calendar year. They are covered 10 days after the employer qualifies.	C	See col. 2.
Wyoming	Those in power farming when 1 or more are employed for an average of 6 months each year. "Power farming" means work on a farm, livestock ranch, or poultry farm which uses in connection with its operation any power-driven equipment, such as a pickup truck, feed grinder, stacking machinery, tractor, mower, baler, or road grader.	E	None.

[1] Unmentioned jurisdictions do not have compulsory or elective coverage of agricultural workers but, in most, employers may bring them under the act voluntarily.

Source: Employment Standards Adminsitration, U.S. Department of Labor.

It has been argued that agricultural employment originally was excluded from workmen's compensation because, at the time, agriculture was a family affair with relatively few occupational hazards. Actually, the work was hazardous even then. The real reason for the prevalent exemption of agricultural labor was more likely that farm owners with political power did not desire coverage any more than they desired other labor legislation. Exemption of agricultural workers was one of the prices of protecting industrial workers with compensation laws.

The family farm has been replaced largely by commercial, highly mechanized farming operations. With farm employment continuing to rank among the most hazardous types of work (only mining and construction have higher death rates per 100,000 workers) the extension of workmen's compensation protection to agriculture is overdue.

Domestic Workers and Casual Employment

Still another line of argument has been employed to prevent coverage of domestic servants and of casual workers engaged in activities not in the usual course of the employer's trade or business. With respect to industrial employment, it was said that the price of the product must bear the cost of work injuries. In other words, the employer could in effect pass on the cost of compensation to the buyer of his goods. Employers of domestic or casual workers, it is argued, have no product for sale. In addition, there are practical difficulties in the way of providing protection to persons employed irregularly, sporadically, and for brief periods. Nevertheless, an injury can disable a domestic or casual worker no less than a mechanic, with as much prospect of lifelong deprivation. The ILO Report on *Benefits in the Case of Industrial Accidents and Occupational Diseases* (1962) pointed out that "Domestic workers are covered in most European countries, and in a few countries in other parts of the world." Only 10 jurisdictions have taken steps toward coverage of domestic servants: Alaska, California, Connecticut, Maryland, Massachusetts, Michigan, New Jersey, New York, Ohio, and Puerto Rico.

Few States provide protection for employment that is casual and not in the course of the employer's trade or business. The precise terms of exemption, however, vary from State to State. Wisconsin exempts work that is not in the course of the employer's trade or business but specifies that employment in the employer's usual business is covered regardless of how "casual, unusual, desultory, or isolated" that business may be. In Texas, the law specifies that, though employment outside the employer's usual course of business is exempt, if the employee is temporarily directed by his regular employer to do something outside his usual job, he is covered.

Charitable and Religious Institutions

Employees of charitable and religious organizations in some States are restricted from coverage traditionally because their employer is not engaged in a business for pecuniary gain. Few laws deal explicitly with their status. Arkansas and Georgia expressly exclude them. Illinois specifically includes them. Georgia, Idaho, New York, Oklahoma, Vermont, and Wyoming exclude activities not carried on for pecuniary gain. For the rest, the matter has been left in the hands of the courts. A majority of decisions have held that their employers are subject to the compensation act.[4]

However, because of the many exemptions, variations, and conflicting holdings, it would appear desirable to enact specific statutory authority.

Lack of Contract of Hire

The absence of a contract of hire or the lack of an employer-employee relationship may deny coverage to workers who perform valiant public services as volunteers for firefighting, rescue squads, USO, Red Cross, lifeguards, or safety patrols. This restriction applies also to persons subject to injury while working as trainees, relief workers, and inmates of public institutions. Some States have extended coverage to Civil Defense volunteers and members of volunteer fire departments but progress has been slow.

Public Employee Coverage

Only 6 of the 23 laws passed prior to 1914 provided coverage of public employment. Today coverage of public employment, especially in local governments, frequently is only elective or voluntary. It is difficult even to estimate how many of the local governments with optional coverage elect workmen's compensation, although many public workers injured on the job are known to be uncompensated. With the great growth in State and local employment in recent years, such limitation on coverage should be removed.

As with private employment, coverage of public employees differs markedly from State to State. Some States have no exclusions or exempt only elected or appointed officials. Others, on the other hand, limit coverage to specified departments, to selected subdivisions, or employees in hazardous occupations. Still others leave coverage to the discretion of the State agencies or the political subdivisions. Policemen and firemen are sometimes exempted if they are covered by a municipal disability plan. The laws are compulsory in 44 States and Puerto Rico for State employees eligible for coverage. Three States provide elective coverage and two voluntary. Alabama has no coverage of State employees.

Employees of local governments are in a slightly less favorable position as to type of coverage. For those eligible, coverage is compulsory in 36 States, the District of Columbia, and Puerto Rico, elective in seven, and voluntary in seven. Public school teachers are covered either specifically or by interpretation in 31 States, the District of Columbia, and Puerto Rico. In 13 other States, the laws permit but do not require coverage of school teachers. Many elective and appointive officials still do not have the same protection as other government employees. By contrast, coverage under the Federal Employees' Compensation Act was extended in 1949 to civilian officers in all branches of the Federal Government, including judges and legislators.[5]

Coverage of Self-Employed Persons

Coverage of self-employed persons is a striking departure from the concept of workmen's compensation as a substitute or replacement for employers' liability, where the object is at least as much to protect the employer from unlimited liability as to provide compensation for the injured. Although self-employed persons are not in any sense liable to themselves, an injury or illness poses as grave a threat to them as to those employed by others. Working partners are in the same category. Some other countries have begun to permit inclusion of the self-employed, as well as unpaid family members, in the compensation system. Experience under the Social Security Act indicates that the United States could also move in this direction on a voluntary basis.

At least five States (Maryland, North Dakota, Oregon, Utah, and Washington) now permit sole proprietors to accept coverage for themselves. California, Michigan, Mississippi, and Nevada permit voluntary coverage of working partners.

Railroad Workers and Seamen

Workmen's compensation laws do not cover interstate railroad workers and seamen. The railroad employees are protected under the Federal Employers' Liability Act of 1908, which gives an injured employee an action in negligence against his employer and provides that the employer may not plead the common-law-defenses of fellow servant or assumption of risk. It also substitutes the principle of comparative negligence for that of contributory negligence. In 1901, it is estimated one out of every 399 railroad employees (one out of every 137 operating employees) lost his life through occupational accident. Consequently, be-

fore workmen's compensation was well established, this large group of employees was given a means of winning claims at court for damages caused by an employer's negligence. Since then, various interests, particularly railroad management have tried to bring railroad workers under workmen's compensation. The railroad union officials believe workers can win better settlements under the FELA. Railroad workers are entitled also to sickness benefits under the Railroad Unemployment Insurance Act, which protects them from short-term disabilities. Disability retirement is provided for those who qualify under the Railroad Retirement Act.

The Jones Act extended the provisions of the FELA to seamen in 1920. Seamen, too, have opposed efforts to bring them under compensation acts. They also have protection against the consequences of work injury under the Admiralty Law and related measures. Maritime workers other than seamen are under the Federal Longshoremen's and Harbor Workers' Compensation Act of 1927. Employees of airlines and interstate trucking and bus companies come under State workmen's compensation laws.

Specific Exemptions

Certain specific exemptions in some State laws, though probably with little effect on the general extent of coverage, include turpentine labor in Florida, employees of common carriers engaging in intrastate commerce by steam power in Georgia, crews of crop-spraying aircraft in Louisiana, and employers of sawmill and logging operations having fewer than 10 employees in North Carolina. South Carolina also exempts sawmills, manufacturers of shipping containers, logging operations, production of turpentine, steam laundries, rock quarries, sand mines, oil mills, express companies, State and county fair associations, and peach packers, as well as small firms, farms, household, and casual labor. (A number of these exemptions in South Carolina were dropped in 1972.)

ISSUES IN WORKMEN'S COMPENSATION COVERAGE

Measurement of Coverage

Although basic operating statistics are essential to effective administration, few States have adequate recording and data collection systems for workmen's compensation. Ethelbert Stewart, Commissioner of Labor Statistics and Secretary-Treasurer of the IAIABC, complained in 1928 that

> There is not a State in the union from which I can get statistical returns that knows how many and what percentage of establishments, according to size, have voluntarily elected to come under the workmen's compensation law. They can tell me how many have come in. They cannot or do not, or will not tell me how many have not come in.[6]

The situation has not improved significantly with the passage of time. Skolnik and Price reported in October 1970 that the States

> are not in a position financially or administratively to gather the type of data that are the normal byproducts of such other social insurance programs as Old-Age, Survivors, Disability, and Health Insurance (OASDHI), and unemployment insurance. Less than a third of the States collect . . . any data on the number of covered workers or the amount of covered payrolls under workmen's compensation. * * * Practically no State has any data on the number of persons currently receiving workmen's compensation benefits.[7]

Despite these differences, the Social Security Administration for many years has provided estimates of workmen's compensation coverage by building up a covered payroll for each State to calculate the number and proportion of covered workers. Table 7.3 shows the estimated number of workers covered under State and Federal workmen's compensation programs in 1940, 1946, and yearly from 1946 to 1970.

Expansion of Coverage

Compensation administrators generally accepting some limitations upon coverage as inevitable, have worked mainly for gradual extension of coverage by removing or narrowing certain exclusions. In contrast, the various national conferences on labor legislation, held in the 1930's and 1940's, recommended broad coverage. The fifteenth conference, held in 1948, included a recommendation that coverage extend to "all industries and employers, including State and municipal. No exemptions of small employers or non-hazardous in-industries * * * "[8] The IAIABC has , on numerous occasions, endorsed the principle of compulsory

Table 7.3.—ESTIMATED NUMBER OF WORKERS COVERED BY WORKMEN'S COMPENSATION IN AN AVERAGE MONTH, 1940, 1946, AND 1948–70 [1]

Year	Number (millions)	Percentage of employed wage and salary workers [2]
1940	24.2–25.0	70.8
1946	32.2–33.2	76.8
1948	35.6–36.3	77.0
1949	34.9 35.7	76.9
1950	36.5–37.2	77.2
1951	38.3–39.0	78.4
1952	39.1–39.7	78.9
1953	40.4–41.0	80.0
1954	39.5–40.0	79.7
1955	41.2–41.6	80.0
1956	42.8–43.1	80.2
1957	43.2–43.4	80.5
1958	42.4–42.6	80.2
1959	43.9–44.1	80.3
1960	44.8–45.0	80.4
1961	44.9–45.1	80.3
1962	46.1–46.3	80.4
1963	47.2–47.4	80.5
1964	48.6–48.9	80.8
1965	50.6–50.9	81.5
1966	53.5–53.8	83.1
1967	54.9–55.1	83.1
1968	56.7–56.9	83.8
1969	58.8–59.0	84.4
1970	58.8–59.0	83.4

[1] Before 1959, excludes Alaska and Hawaii.

[2] Midpoints of range used in computing percentages.

Source: Employed wage and salary workers from "Current Population Survey," Bureau of Labor Statistics, starting with 1967, excludes those aged 14 and 15 (as well as younger workers) and includes certain workers previously classified as self-employed. "Wage and Salary disbursements from Office of Business Economics," Department of Commerce.

coverage, with no numerical or specific exemptions, though in a recent survey some administrators still feel coverage of agricultural workers is impractical at this stage, and that a numerical or monetary exemption relating to such workers is desirable.[9]

The "Suggested Language for a Workmen's Compensation and Rehabilitation Law," published by the Council of State Governments in 1965, adopted the principle of virtually complete, compulsory coverage. The only exemptions were for farmers with fewer than three employees, charitable or religious organizations having fewer than four employees, domestic servants in private homes where fewer than two such domestics are regularly employed 40 or more hours a week, certain casual workers employed in maintenance or repair work in or about the employer's home, persons performing services in return for aid or sustenance only from religious or charitable organizations, and persons (like the railroad workers or seamen) for whom a rule of liability for injury or death is provided by Federal law.

Executive officers of corporations, apprentices, certain newsboys, some volunteer workers, and other categories now often excluded would be covered if the Council's suggested language were accepted, but partners or the self-employed, on the ground that these are not employees, would not be.

The Council's draft, if accepted, would come close to universal coverage for all occupational injuries. Some students of workmen's compensation believe that even further advances are possible and desirable, despite the remaining administrative and legal obstacles in the way. They argue that, by special mechanisms for insurance and administration, coverage can be extended to the workers who need it most, for example, by "deeming" certain trainees to be employees, as under the Oregon Act.

In his commentary on the Council of State government's draft, Arthur Larson pointed out the case for complete coverage:

> The reason for the importance of completeness in a workmen's compensation act is that this class of legislation has been entrusted with one segment of the total job of protecting workers against wage loss. The Federal Social Security Act has assumed the main task of handling old age retirement, as well as survivorship and total disability without respect to industrial origin. The unemployment compensation system is designed to take care of economically caused wage loss. But as to industrial injury and death, the basic responsibility has been placed upon the Workmen's Compensation Acts, and to the extent that these acts fail to provide complete coverage or protection, there is a strong possibility that protection is not provided at all by any public system. At best, the cases missed by an adequate compensation coverage are perhaps picked up by public assistance, with the result that the public ultimately pays the bill anyway, and the protection is afforded in much less dignified and less satisfactory form.[10]

At worst, the worker who is not covered must meet the greater part of the cost of his work injuries out of his own resources or fall back on charity.

Relationship Between Exemptions and Extent of Coverage

The relationship between the coverage provisions or exclusions in the State laws and their ratio of actual to potential coverage was analyzed by Skolnik and Price in 1970.[11] Of the 15 low-coverage States, with less than 70 percent of potential coverage in 1968, 11 exempted small firms, only two provided some coverage for farmworkers, and eight had elective laws. Coverage of State and local government employees was also much more limited in these States than elsewhere.

By contrast, nine of the 13 high-coverage jurisdictions, covering 85 percent or more of the potential, had compulsory laws and did not exempt small firms; two others in the group had compulsory laws but exempt firms with only one to two employees. Only four laws were elective and they had no numerical exemptions. Eight provided some coverage for agricultural workers. Without exception, each of the 13 States in this group provided mandatory coverage for all, or practically all, their State and local government workers.

Coverage Under the Social Security Act

A comparison with the coverage under the Federal social security system puts workmen's compensation coverage in a national perspective. The publication, Social Security Programs in the United States (HEW/SSA 1968) summarizes the status of coverage under the Social Security Act:

> The Social Security Act of 1935 covered employees in nonagricultural industry and commerce only. Since 1935, administrative difficulties involved in covering other types of employment have been resolved and coverage has been extended to workers in nearly all kinds of employment, including self-employment and work on farms, in private households, in State and local government, and in private nonprofit organizations.
>
> As a result of the coverage extensions, the old-age, survivors, disability, and health insurance program today approaches universal coverage. During a typical week, more than 9 out of 10 persons who work in paid employment or self-employment are covered or eligible for coverage under the program, compared with less than 6 out of 10 when the program began in 1937. Except for special provisions that are applicable to only a few kinds of work, coverage is on a compulsory basis * * *
>
> The majority of workers excluded from coverage under the program by the Social Security Act fall into three major categories: (1) Those covered under Federal civilian staff retirement systems, (2) household workers and farmworkers who do not earn enough or work long enough to meet certain minimum requirements (workers in industry and commerce are covered regardless of regularity of employment or amount of earnings), and (3) persons with very low net earnings from self-employment.[12]

Although coverage by social security appears broader than in workmen's compensation, those covered must work a certain number of quarters in order to qualify for disability benefits. In contrast, under workmen's compensation, a covered worker is eligible for benefits, if injured, from the moment he starts work. About 80 percent of persons of working age have worked long and recently enough to be eligible for social security benefits.

Enforcement of Coverage

Even were there no coverage gaps in the substantive law, the inadequacies of enforcement would account for a degree of noncoverage. When an injured worker's employer is uninsured, his real and acute problems are anticipated in few States. Only nine have arrangements for paying the claims of injured employees who are unable to collect compensation from noncomplying employers. In North Dakota, Ohio, and Oregon, the State funds assume this responsibility. In Arizona, Connecticut, and Minnesota, such claims are paid out of special compensation funds that also serve other purposes. New York, New Jersey, and Maryland each has an uninsured employers fund.[13] Even though nearly all States have penalties for noncompliance, some injured workers are unable to collect compensation. Their right to file suit for damages against their employer, with the common-law defenses abrogated, is of litle value if the employer is judgment proof.

CONCLUSION

Between 1960 and 1971, five States changed from elective to compulsory laws; six eliminated their numerical exemptions, and 10 extended coverage to general farm employment. A number of States have expanded their coverage of public employ-

ment or eliminated specific exemptions. In the past few years, Oregon, Hawaii, Maryland, Washington, and others have been able to reduce the exclusions from their acts substantially. Some of these States appear to be modeling their coverage provisions along the lines suggested by the Council of State Governments, a course that others also may follow.

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10. "Workmen's Compensation and Rehabilitation Law, with Section by Section Commentary," reprinted from *Suggested State Legislation*, The Council of State Governments, Chicago, Ill., 1965, p. 77.
11. Skolnik & Price, *op. cit.*, pp. 7–9.
12. *Social Security Programs in the United States*, Social Security Administration, U.S. Department of Health, Education, and Welfare, 1971, pp. 25–26.
13. Williams, Jr., Dr. C. Arthur, *Insurance Arrangements Under Workmen's Compensation*, Bulletin 317, Bureau of Labor Standards, U.S. Department of Labor, 1969, p. 26. Maryland and New Jersey have established uninsured-employers funds in recent years.