

Commentary

N.J. Workers' Compensation Program: A Century of Cooperation, Innovation

By Peter J. Calderone

This year marks the 100th anniversary of the New Jersey workers' compensation program. It is a history of cooperation and innovation involving employers, workers, attorneys and judges that has provided an efficient, transparent and supported workers' compensation system.

With a diverse and productive workforce of 4 million men and women, there are more than 150,000 reported workplace injuries a year in New Jersey. To ensure expeditious medical care and compensation for workplace injuries, New Jersey maintains a highly innovative and technologically advanced system through the Division of Workers' Compensation in the New Jersey Department of Labor and Workforce Development for reporting, managing and resolving workplace injury claims.

In the early 1900s, New Jersey was evolving into an industrial state but maintained antiquated employers' liability laws that precluded injured workers from medical treatment or compensation when the employee's negligence contributed to the accident, the accident was a natural risk of employment or the accident was due to the act of a fellow servant.

Recognizing the changing workplace environment, the Legislature in 1910 established the Employers' Liability Commission, made up of two business representatives, two labor representatives and two legislators to review and report on the state's workplace injury

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provisions. The commission issued a report on Jan. 16, 1911, with proposed workers' compensation legislation. The Legislature adopted the commission's recommendations and Gov. Woodrow Wilson signed the state's initial workers' compensation provisions on April 4, 1911. New Jersey thus became one of a few states to enact the first workers' compensation provisions. Today, every state has its own workers' compensation system without federal oversight.

From the start, N.J. has been in the vanguard of resolving workplace-injury claims.

Since the 1911 enactment, New Jersey's workers' compensation program has developed into a comprehensive, no-fault system that first provides all reasonable and necessary medical care for an employee injured at work. While medical care is a mandatory obligation, the employer has the right to select and authorize the medical providers. An injured worker also is entitled to temporary disability benefits as wage replacement at 70 percent of his or her gross wages, up to the statutory maximum, which for 2011 is \$792 a week. Temporary disability benefits continue until the worker reaches maximum benefit of medical treatment, returns to work

or receives the statutory 400-week payment limit.

Nearly 40,000 claim petitions are filed annually with the Division of Workers' Compensation, generally seeking permanent disability or dependency benefits in addition to any medical treatment or temporary disability payments provided by the employer. Claims can also be filed over the denial or adequacy of medical treatment and/or temporary disability payments.

In New Jersey, permanent disability is compensated pursuant to a statutory schedule for documented functional loss by objective medical evidence that has lessened an individual's work ability and/or significantly impaired other life pursuits. Dependency benefits are awarded to statutory dependents of a deceased worker at 70 percent of a worker's gross wages, up to the maximum amounts and time periods set by statute.

With only a relatively few pro se exceptions, claim petitions to the Division of Workers' Compensation are generally filed by an attorney for the injured worker or dependent. The petitions are assigned to a workers' compensation judge at one of the 15 court vicinages, based on the residency of the injured worker or dependent. An answer is then filed by the employer's attorney.

Attorney representation of the case parties is a significant feature of the New Jersey system that is less common in other states. The workers' compensation bar in this state is highly specialized and skilled in assessing injury value and navigating the court system. This is evidenced by the fact that the Workers' Compensation Section of the New Jersey State Bar Association is one of the largest attorney groupings in that organization and the New Jersey Justice James Coleman Jr. Workers' Compensation Inn of Court is the nation's largest and most active such Inn.

The annual Workers' Compensation Bench-Bar Conference in 2010, pre-

sented by the State Bar's Workers' Compensation Section and the New Jersey Division of Workers' Compensation, in cooperation with the New Jersey Institute for Continuing Legal Education, had an attendance of more than 500 judges and attorneys recognizing the emphasis on continuing legal education and the cohesiveness of the workers' compensation legal community.

More than 95 percent of claim petitions that result in an award are settled between the parties with judicial oversight and approval. The workers' compensation judge, under statutory and administrative procedures, also sets all allowances for medical experts, court reporters and counsel fees.

New Jersey was the first state to have a fully automated workers' compensation case management system. This integrated program provides for, among other features, electronic filing of court documents, party computer access to case information and scheduling, e-mail court calendars and the efficient maintenance of current and closed case files.

The Division of Workers' Compensation website, one of the most visited in state government, contains, among other references, the workers' compensation statute, court rules, reported trial and appellate court decisions, a research manual, injury schedules and a computation program for injury value and credits. A practicing attorney can, for the most part, use the case management program and website information to successfully represent clients in workers' compensation proceedings.

After 100 years, the New Jersey workers' compensation system is continuing a history of labor and management cooperation and support to ensure that injured individuals receive medical care and appropriate compensation. The centennial is also a tribute to the judges and attorneys who sustain the program through diligent client representation and fair resolutions of claims. ■