



# Workers' Compensation: Overview and Issues

## Introduction

Nearly all workers and employers in the United States are covered by workers' compensation. When a covered worker is injured, becomes sick, or dies as a result of his or her employment, that worker is entitled to full medical coverage for the injury, cash benefits to replace a portion of wages lost due to inability to work, and benefits for surviving family members in case of death. Employers are responsible for providing workers' compensation benefits to their workers and generally purchase insurance to cover these costs. The federal government has only a limited role in the provision of workers' compensation because most workers are covered by state law. Federal programs cover federal employees, coal workers with black lung disease, longshore and harbor workers, overseas military and public works contractors, and former atomic weapons industry workers. Although every state has a workers' compensation system, there is no federal mandate that states have workers' compensation, no federal standards for state programs, and no oversight of state systems.

**Table 1. Total Workers' Compensation Costs and Benefits, 2017**

|                  | Billions of \$ | Per \$100 in Covered Payroll |
|------------------|----------------|------------------------------|
| Total Benefits   | 62.0           | 0.80                         |
| Medical Benefits | 31.2           | 0.40                         |
| Cash Benefits    | 30.8           | 0.40                         |
| Employer Costs   | 97.4           | 1.25                         |

**Source:** Elaine Weiss, Griffin Murphy, and Leslie I. Boden, *Workers' Compensation Benefits, Costs, and Coverage-2017 Data*, National Academy of Social Insurance, October 2019, p. 2, <https://www.nasi.org/research/2019/report-workers-compensation-benefits-costs-coverage-2017>.

## The Grand Bargain of Workers' Compensation

Before the first workers' compensation laws were passed by Congress in 1908 and the states in 1911, workers had no alternatives but to sue their employers for reimbursement of costs associated with medical care and lost work due to job-related accidents and illnesses. In addition to the costs of bringing such suits, workers had to demonstrate that their employers, and not any third parties or the workers themselves, were responsible for their injuries. Although employers could often avoid being held liable for employment-related injuries, illnesses, or deaths, employers faced uncertainty in what their costs would be if they lost a case and a single case could, depending on the damages awarded by the court, have a catastrophic financial impact on an employer.

Workers' compensation is often referred to as a "grand bargain" between workers and employers. Under workers' compensation, workers receive benefits for covered injuries, illnesses, and deaths without regard to fault or liability. In exchange for this coverage, employees are prohibited from suing their employers and workers' compensation is the exclusive remedy for workplace injuries, illnesses, and deaths. Employers are protected from lawsuits but must pay statutorily defined benefits in all cases. Employers can purchase insurance to mitigate their financial risk and increase cost predictability.

## Workers' Compensation Benefits

Workers' compensation benefits are set by state law, or in the cases of the limited federal programs, by federal law, and thus differ among programs. However, all systems provide for complete medical coverage, at no cost to the worker, for any treatment of covered injuries and illnesses. Systems differ on the rights of employees to select treatment providers. Approximately 75% of all workers' compensation cases involve only medical benefits with no time lost from work due to injury or illness.

In addition, all systems provide for limited wage replacement, usually two-thirds of the pre-injury wage, if an injury or illness prevents an employee from working. For certain permanent partial disabilities, such as the loss of a limb or an eye, a set amount of benefits are paid regardless of ability to work. Survivors benefits are paid to the family members of workers who die on the job and most systems offer vocational rehabilitation to assist employees' return to the workplace. Systems differ in the duration of benefit eligibility, with some systems capping lifetime benefits at a certain amount or number of months, and others paying for the duration of disability or life of the worker.

## Federal Workers' Compensation Programs

Each state operates its own workers' compensation program and these state programs cover the majority of employees in the United States. The federal government, through the Department of Labor, administers the following workers' compensation programs:

- Federal Employees' Compensation Act (FECA) for federal civilian employees;
- Longshore and Harbor Workers' Compensation Act (LHWCA) for private-sector longshore workers, and through extensions of the LHWCA, overseas government contractors, non-appropriated fund instrumentality workers, and workers on the Outer Continental Shelf;

- Energy Employees Occupational Illness Compensation Program Act (EEOICPA) for former public and private-sector workers in the atomic weapons and related industries; and
- Black Lung Benefits Act for coal miners with coal workers' pneumoconiosis (black lung disease).

In addition, the federal government administers limited benefit programs for certain other workers, including former atomic testing workers and September 11<sup>th</sup> responders.

## Employer Costs

As shown in **Table 1**, in 2017, workers' compensation costs for employers were \$97.4 billion or \$1.25 for every \$100 in covered payroll. Although there has been some growth in employer costs since 2009, employer costs per \$100 in covered payroll for workers' compensation in 2017 are significantly lower than they were in 1980 (\$1.76), which ended a period of cost and benefit expansion as states voluntarily adopted many of the recommendations of the National Commission on State Workmen's Compensation Laws.

## State Insurance Systems

In all states, except Texas, which allows employers to opt out of coverage, workers' compensation is mandatory for nearly all employers. States workers' compensation laws differ in how employers may provide for benefits. In four states, employers must purchase insurance from state-administered funds rather than the open market. In 17 states, employers may elect to purchase insurance from state funds or private insurers. Thirty states do not offer state funds and in all but two states, qualified employers may self-insure for workers' compensation.

## Past Congressional Involvement in Workers' Compensation

Congress has historically left it up to the states to decide whether to have workers' compensation programs and to regulate the make-up and administration of these programs. In addition to creating federal programs for federal employees and other workers, the most significant congressional involvement in workers' compensation came in 1970 with the Occupational Safety and Health Act (OSH Act). In addition to requiring employers to comply with federal worker-safety standards, the OSH Act created a national commission to study state workers' compensation laws to see if these laws needed reform. The commission issued its final report in 1973 and called on states to reduce the number and types of workers excluded from coverage and provide a minimum level of benefits of two-thirds of a worker's pre-disability wage.

After publication of the national commission's report, legislation was introduced in Congress to require states to comply with minimum standards of workers' compensation based on the commission's recommendations or have the federal government take over their workers' compensation systems. This legislation was not enacted into law and Congress has made no significant attempt since the early

1970s to set minimum standards for state workers' compensation systems.

## Congressional Activity

Activity in the past few years has focused on proposed changes to FECA designed to reduce program costs and bring benefit levels more in line with state programs. These changes would, among other things, eliminate augmented compensation, which brings benefits to 75% of a worker's pre-disability wage if there are dependents, and adjust benefits at retirement age to encourage federal workers to switch from the FECA program to federal retirement benefits. In addition, because United States Postal Service makes up more than 45% of all FECA cases, Congress has framed FECA reforms in the context of larger legislation to make changes to the Postal Service.

Legislation (H.R. 2425 in the 116<sup>th</sup> Congress) has also focused on whether aquaculture workers should be exempt from workers' compensation as seamen under the Merchant Marine Act (Jones Act).

## Issues

Policymakers have raised the following issues regarding federal and state workers' compensation programs:

- The wide variance in state benefit levels, especially for permanent-partial disability benefits and the concern that some states may be engaged in a "race to the bottom" on workers' compensation;
- The role of prescription drugs, especially opioid pain killers, compounded drugs, and physician-dispensed drugs, in workers' compensation treatment;
- The persistence of litigation, through appeals and suits for deliberate torts, in workers' compensation systems despite the grand bargain and the role of settlements between insurers and workers in long-term cases;
- The interaction of workers' compensation with other public systems, such as Social Security Disability Insurance (SSDI) and Medicare, including issues related to employers and insurers shifting costs from workers' compensation to these federal benefit programs;
- The integration of workers' compensation into the larger issue of occupational safety and health; and
- How workers' compensation systems designed in the early 20<sup>th</sup> century can best provide for workers and employers in the changing workplaces of today.

## For Additional Information

CRS Report R44580, *Workers' Compensation: Overview and Issues*, by Scott D. Szymendera

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