WORKMEN'S COMPENSATION IN WISCONSIN

BY

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NEED FOR WORKMEN'S COMPENSATION

The welfare of the state depends upon its industries and, therefore, upon the welfare of its wage workers. From two thirds to three fourths of all productive workers in the United States depend upon wages or small salaries for their existence.[1.] Since such wages rarely are more than sufficient to meet the cost of a normal standard of health and efficiency for a family, and some are much less, an annual surplus in the working man's budget is a very rare thing and if it exists, it is very small. A large proportion of "savings" in our American banks belong to other classes of population and in so far as information is available, the average working man's deposits are very small.[2.] The fact that wages are higher does not mean a cure-all for economic difficulties of the wage worker because retail prices are also higher. From an inquiry 1890-1912 the conclusion was reached that the American wage worker has been rapidly losing and had lost from ten to fifteen per cent of his earning power.[3.] This will mean that his savings will be proportionately less.

If sickness or accident comes to the family what is to become of them? In a current report of a charitable organization it was stated that when ordinarily self-supporting families are forced to apply for relief, sickness or accident is the primary cause of need in more than half the

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1. Rubinow- Standards of Health Insurance, Chap.I, page 14.
2. Rubinow- Standards of Health Insurance, Chap.I, page 15.
3. Rubinow- Standards of Health Insurance, Chap.I, page 16.

cases. It is frequently stated that an industrial worker cannot afford to be sick, and when this means that the family income stops, while expenses for physician, medicine and nurse accumulate, it is easy to see that the family savings, if there are any, may soon be exhausted.[1] In too many cases it has not been possible to make provision for such an emergency and either his fellow workman or some relief-giving organization must be asked to come to his assistance with the possibility of the ultimate loss of the family's self-respect. Or perhaps death snatches away the breadwinner of the family and the widow with young children on her hands is suddenly destitute. Some means must be found of providing for such cases and at the same time maintaining the self-respect of the individual.

The disability is not evenly distributed. Working people suffer an average disability of nine days per year; a large part are sick for a few days only; some suffer several weeks of disability; while others are incapacitated for months and perhaps for years.[2] Because the burden falls unequally and with crushing force on some, and because the fault lies almost entirely with society, the necessity of a more equitable means of distributing the loss is plain.

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1. Dr. Wm. Bailey- When Sickness Stops Wages, What? Municipal Reference Library.
2. Program for Social Stability, J. A. Lapp, Ohio Charities Bulletin 1919.

The times are long past when the employer knew personally each of his employees and could take a personal interest in his welfare and that of his family. Under the common law and under the later Employers' Liability Law the employer might plead any of three defenses and could usually escape payment. He might plead first, that in accepting the position, the employee assumed the risk of the hazard complained of; or the injury or death might have been caused in whole or in part by the want of ordinary care of a fellow servant; or third, he might plead that injury or death was due to want of ordinary care on the part of the injured employee.[1.]

But it is not always possible to prove a fault in case of liability. With improved safety appliances it is easier to avoid accidents, but with large scale production, involving vast plants and millions of workers, accidents are necessary consequences of industry. Nor can the carelessness be laid at the door of either the worker or a fellow employee. Yet the injured worker must suffer, not only pain and enforced idleness, but often, in case of no compensation, severe monetary loss as well.

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1. Wisconsin Workmen's Compensation Law 1927, Sec.102.01-1

As a rule, wages are not sufficiently high in dangerous occupations to offset the risk of the occupation. Wage earners do not commonly insure themselves against accidents. This is perhaps partly due to the inherent optimism of human nature which somehow feels that even though others may be injured, his turn will not come, but mostly to the fact that the wages of the average worker are not sufficient to allow him to spend money on what "may be" unnecessary.

The employer can insure against loss connected with accidents to plant and equipment and pass on the cost of insurance as a normal item in expense of production. Why should he not also pass on the cost connected with accidents to workers? This principle that industry, and through industry, society should bear the burden of industrial accidents is becoming quite generally accepted at present.[1] Industry, realizing that industrial hazards cannot be completely eliminated, has been increasingly accepting responsibility for physical disabilities incurred in production.

The old Employers' Liability Law has proved very defective. Under it less than one-half (45%) of the premiums paid go to the workmen. The rest is absorbed by

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1. American Federation of Labor- Standards for Workmen's Compensation Legislation 1925.

attorneys and lawyers. To get any compensation the workman must put himself in a position of hostility to his employer and ill feeling is the result. The way is also open to the "Ambulance-chasing" lawyer to persuade the workman, often against his better judgment, to enter into litigation which may prove costly and of no benefit. Litigation is discouraging; delay is incident to recovery; recovery is uncertain and only a small portion may be left after payment of the lawyers' fees.

Our national life today is becoming more and more industrial. Labor now participates more fully in the decisions that shape human life than ever before, and more fully in America than in any other nation on earth. According to Professor Wambaugh, "There is no more certain way of securing attention to the safety of men, an unquestionable constitutional object, than by holding the employer liable for the accident." The employer passes it on as a cost of production and thus society as a whole, not the individual injured workman, bears the burden.

The Law should apply to all employers. There may be reason because of administrative difficulties to exclude certain kinds of labor, but exclusion of employments or employers on the ground of low hazard is indefensible from every point of view and especially from that of the injured workman whose misfortune is not at all alleviated by the suggestion that the

injury was quite unusual or unexpected. For this same reason the small employer should not be exempted from the Compensation Act. There is no reason either why occupational diseases should not be compensated.

Recent investigations of the Department of Labor have shown that state funds could operate cheaper than either the mutual or stock companies in carrying compensation. Thus far no injured workman has lost his compensation because of the insolvency of state funds, nor has any large mutual company become insolvent.

But whatever the system, some such means must be adopted on behalf of the masses. Charity and dependence the worker deplores. A life of frugal comfort[1] and enough to educate his children, he could expect, given his health and a job. Workmen's Compensation will insure his independence, self-respect and the achievement of his ambitions and ideals.

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1. Pope Leo's Encyclical on Labor

HISTORY OF WORKMEN'S COMPENSATION ACT OF WISCONSIN.

The rise of the modern industrial system, concentrating labor in factories and exposing this labor to the hazard of complicated and dangerous machinery, caused an increasing number of industrial accidents. The responsibility of the employer for these accidents and the indemnification of the worker against their consequences were determined under the common law. Here the employer might plead that the accident was due to "wilful negligence" on the part of the worker, or that a "fellow servant" was careless. Failing in this, he might prove that he had no responsibility because the worker in taking the job "assumed the risk." By means of these three defenses, abrogated under the Workmen's Compensation Law, the employer could usually escape payment of compensation.[1]

Such a system proved very unsatisfactory. Even employers were disgusted with the old system. In only one case out of eight did the injured employee derive benefit; litigation was expensive and the amounts recovered were absurdly small; the court proceedings were wasteful and often meant actual loss to the breadwinner and his dependents; ambulance-chasing lawyers discredited the whole legal profession; workers became suspicious of the good-will of employers and the ill feeling created between employer and employee often led to serious labor difficulties.

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1. Report of State Insurance Fund, N.Y. State Dept.of Labor 1926

Public criticism was roused because of the fact that inadequate recovery often resulted in making the injured employee and his family an object of private or public charity. Employers, especially those whose operations were conducted on a comparatively small scale, soon found that the payment of verdicts, occasional though they were, entailed a severe financial strain upon the resources of their business, to say nothing of a loss of catastrophic magnitude. The consequence was an increasing demand for insurance coverage to lessen the burden of the individual employer by distributing his risk over many employers. The result was Employers' Liability Insurance.[1.]

Insurance companies were in the business for profit, hence it was not strange that they frequently availed themselves of all possible means to escape payment of verdicts or reduce the amount of these through due process of law or by compromise. Much injustice was done to workmen through the operation of this system. Often the workman would be induced to waive all claims on payment of a certain, perhaps pitiably small, sum.

Inquiry showed that many accidents resulted from inherent hazard of the industry, rather than from negligence of one party or another. In some cases both employer and employee were to blame, in others the accident was more the result of ignorance than of negligence. Hence the demand

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1. Report of State Insurance Fund, N.Y. State Dept. of Labor 1926

for a system in which the burden would be thrown on the industry at large and the employee would be free from certain legal difficulties, particularly from the necessity of proving negligence on the part of the employer.

New York state was first to pass a Workmen's Compensation Law in 1910. This was declared unconstitutional on the ground that the law imposed payment of compensation upon employers who had not been guilty of contributory negligence.

In 1911 Wisconsin passed a Workmen's Compensation Law. Compensation in this country was then a new thing and there was no adequate experience upon which compensation rates could be based. The First Manual under the Wisconsin Act represented underwriters' estimates of probable cost. Experience has shown that these first rates were pitched altogether too high for Workmen's Compensation and altogether too low for Employers' Liability. The fundamental basis for insurance rate making is experience. During the years 1911--1914, taking merit rating into consideration, the net reduction of the period was over fifty per cent.

By merit rating, an employer who has taken every precaution against accident in his establishment, by protecting dangerous machinery, installing fire escapes, etc., will be charged a lower rate than the employer in whose plant the hazard is greater. Thus it is to the interest of the employer to safeguard his workers.

APPLICATION OF WISCONSIN WORKMEN'S COMPENSATION LAW.

Limitations of the Law.

According to the Wisconsin Workmen's Compensation Law of 1927 "Liability for compensation shall exist against any employer for any personal injury sustained by his employee and for death in those cases where the following conditions of compensation occur:"[1].

These facts are first: That the employee was accidentally injured. Second: Employee was injured while performing service growing out of and incidental to his employment. Third: That such injury was not intentionally self-inflicted.

An employer is defined[2] as first; the state, each county, city, town, village, school district, sewer district, drainage district and other public or quasi public corporations therein, and second; every person, firm or private corporation (including any public service corporation) who has any person in service under any contract of hire, express or implied, oral or written, and who at or prior to the time of the accident for which compensation under the Act is claimed, shall have elected to become subject to the provisions of the Act and who shall not prior to such accident have effected a withdrawal of such election in the manner provided.[3].

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1. Section 10203- Workmen's Compensation Act of Wisconsin 1927 page 2.
2. Section 10204- Compensation Act 1927, page 3.
3. Section 102.04- Wisconsin Law 1927, page 4.

Any employer who shall at any time after August 31, 1917 have three or more employees in common employment, he shall be deemed to have elected to accept the provisions of the Act unless prior to that date notice of his non-election be filed with the Industrial Commission.

Farmers and farm labor are not included under these provisions. In determining the number of employees in the common employment of an employer not engaged in farming, farmers or farm laborers working along with the employees of an employer not engaged in farming shall be counted. Members of partnerships shall not be counted as employees under this section.[1.]

An employee is defined as:[1.] Every person in service of state or of any county, city, town, village, or school district therein under any appointment or contract of hire, express or implied, oral or written, except any official of the state or of any county, city, town, village or school district therein. No person subject to direction and control of any superior officer or officers of the state is deemed an official. Sheriffs, deputy sheriffs, constables, marshals, policemen and firemen are deemed employees and sums derived from other pension or benefit funds of organizations to which they may belong are to be deducted from payments made them under the Wisconsin Workmen's Compensation Law.

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1. Section 102.05 Wisconsin Law 1927, page 5.

The Law has certain indemnity limitations: Aggregate indemnity in case of a single accident causing temporary disability is not to exceed four times the earnings of the employee. In case of total permanent disability, there is to be weekly indemnity not to exceed one thousand weeks for persons under thirty one years of age. For each successive yearly age group the maximum limitation is reduced eighteen weeks until a minimum limit of two hundred and eighty weeks is reached. In case of permanent partial disability, the aggregate indemnity paid is in the proportion to that paid for total indemnity as the nature of the injury bears to an injury causing total disability.[1.]

1. Section 102.09 Wisconsin Law 2 (d) Page 12.

BENEFITS OF WISCONSIN WORKMEN'S COMPENSATION LAW.

1. Cash.

In case of accident causing disability the indemnity is as follows:

(a) If the accident causes total disability, sixty-five per cent of the average weekly earnings during the period of such total disability.

(b) If the accident causes partial disability, during the period of such partial disability such proportion of the weekly indemnity rate for total disability as the actual wage loss of the injured employee bears to his average weekly wage at the time of his injury.

(c) If the disability caused by the accident is at times total and at times partial, the weekly indemnity during the periods of each such total or partial disability shall be in accordance with said sub-divisions (a) and (b) respectively.[1.]

Indemnity limitations are mentioned in Section III of this thesis.

In case death results from the injury and the deceased leaves a person or persons wholly dependent upon him for support the death benefits are:

(a) A sum equal to four times his average annual earnings, but which, when added to the disability indemnity

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1. Section 102.09 Medical Attendance Sec. 2, Wisconsin Law-1927, page 12.

paid and due at the time of death, shall not exceed the maximum amount which might have accrued to him for permanent total disability if death had not ensued.[1.]

If death occurs but is not a proximate result of the accident (i.e. if the accident was not the most important of the causes which resulted in death) and if death occurs before the disability indemnity ceases,[2.] the death benefit shall be:

1. If the accident had caused permanent total disability the indemnity shall be the same as if the accident had caused death.

2. Where the accident proximately causes permanent partial disability, the unaccrued compensation shall first be applied toward funeral expenses, not to exceed two hundred dollars, any remaining sum to be paid to dependents as provided and there shall be no liability for any other payments. The question of dependency shall be determined in accordance with the facts, as the facts may be at the time of the accident to the employee. All computations under this paragraph shall take into consideration the present value of future payments.

If the deceased employee leaves no one wholly but one or more persons partially dependent, the Industrial Commission is to decide how much each of these shall re-

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1. Wisconsin Law Section 102.09- 3. (a)
2. Wisconsin Law 1927 Amendment- Sec. 102.09- 4 (b) page 14.

ceive as they would have received it from the deceased. Aggregate benefits thus paid must not exceed twice the annual earnings of the deceased unless four times the contribution of deceased during the year preceding his death exceed twice the annual earnings of the deceased. In no event shall the aggregate benefits in such case exceed the amount which would accrue to a person solely and wholly dependent.[1.]

If wife or husband of the deceased is wholly dependent for support, an additional death benefit is paid for each wholly dependent child. This additional benefit is equal to the average annual earnings of the employee for a child under one year of age and is reduced by one-fifteenth part for children in each successive yearly age group, with no allowance for any child over fifteen years of age, unless the child is mentally or physically incapacitated from earning. In such case, the Commission may make such allowance as is necessary, not to exceed the amount payable to a child under one year of age. A legally adopted child receives the same treatment as a child by marriage.

Children of a former wife or husband are the same in regard to benefit as children of the present spouse.

If no dependent is left, the state treasury receives equal to four times the average earnings of the deceased, such payment not to exceed sixteen hundred dollars. This money with all accrued interest is appropriated to the Industrial Commission for additional death benefits for which they may be liable.

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1. Wisconsin Law, Section 102.09,4 (c) Page 14.

The Commission may supervise the funds awarded to parent or guardian for the child so as to conserve the child's best interests.

Burial expenses not exceeding two hundred dollars are to be paid by employer or insurer in all cases where the accident proximately causes the death.

Death benefits, other than burial expenses unless otherwise provided, are to be paid in weekly installments, corresponding in amount to sixty-five per cent of the weekly earnings of the employee, until otherwise ordered by the Commission.

A list of major, permanent, partial injuries and their corresponding compensations are given and also a lesser permanent partial injury schedule.

(h)When injury is caused by failure of the employer to comply with any statute or any lawful order of the Industrial Commission, compensation and death benefits are increased fifteen per cent.

(i)Where injury is caused by the wilful failure of the employee to use safety devices where provided by the employer, or (j) wilful failure to obey any reasonable rule of the employer for safety of employee, or (k) where injury results from intoxication of employee the compensation is to be decreased fifteen per cent.[1.]

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1. Workmen's Compensation Act 1927, Sec. 102.09, pgs. 22,23.

Payment in gross may be ordered by the Commission any time after six months have elapsed from the date of the injury.

Certain indemnity limitations are discussed under Limitations of Wisconsin Law, Section Three.

BENEFITS OF WISCONSIN WORKMEN'S COMPENSATION LAW.

2. Medical Service.

Such medical, surgical and hospital treatment, medicines, medical and surgical supplies, crutches and apparatus, or at the option of the employee, if the employer has not filed notice as hereinafter provided, Christian Science treatment in lieu of medical treatment, medicines and medical supplies, as may reasonably be required for ninety days immediately following the accident (physician's advice is usually taken as to what is reasonable) to cure and relieve from the effects of the injury, and for such additional time as in the judgment of the commission will tend to lessen the period of compensation disability, or in case of permanent total disability for such period of time as the Commission may deem advisable, and in addition thereto such artificial members as may be reasonably necessary at the end of the healing period, the same to be provided by the employer; and in case of his neglect or refusal seasonably to do so, the employer to be liable for the reasonable expense incurred by or on behalf of the employee in providing the same."[1.]

The employer must name a panel of physicians from which the employee may choose one to attend him, and refusal to do so "shall constitute neglect and refusal to furnish such attendance and treatment."

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1. Section 102.09 (a) Wisconsin Law 1927 pages 9, 10.

Artificial members furnished at the end of the healing period need not be duplicated.

No compensation is to be paid for death or disability of employee if it is caused, aggravated or continued by an unreasonable refusal or neglect to submit to or follow any competent and reasonable surgical treatment.

An employer may elect not to be subject to the provision for Christian Science treatment provided for above by filing written notice of such election with the Industrial Commission.

The number of competent physicians immediately available to the community is taken into consideration in determining the size of the medical panel and if only one such physician is available, this one will be sufficient to comply with the rule. In no event is it necessary to maintain a panel of more than five physicians and in such panel, partners and clinics shall be deemed as one physician. This list of names and addresses of physicians is to be posted where employees can consult it.

If the Commission is not satisfied with the work of a panel physician, it may cause the employee to be examined by a physician selected by the Commission. If report shows that the panel physician has been impartial to employee, the cost of such examination may be charged to the employer, if he is a self-insurer, or to the insurance company which is carrying the risk.

3. Rehabilitation.

An employee is entitled to maintenance during rehabilitation on certain conditions.

He must undertake the course of instruction within sixty days from the date when he has sufficiently recovered from his injury to permit of his so doing, or as soon thereafter as the State Board of Vocational Education shall provide opportunity for his rehabilitation.

He must continue in rehabilitation training with such reasonable regularity as his health and situation will permit.

He may not have maintenance in excess of ten dollars a week during training, nor for a maintenance period in excess of twenty weeks in all.

The Commission shall determine the rights and liabilities of the parties under this section in like manner and with like effect as it does other issues under compensation.[1.]

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1. Wisconsin Law 1927, Section 102.10, page 26.

4. Waiting Period.

The "waiting period" is the seven days of the calendar week immediately following the day the employee first leaves work because of the injury, whether disability from work is present on each of the said days or not. For example, if the employee lost but four days of first week and all of the second week as a result of the accident, he is entitled to compensation for one week.

If the period of disability does not last more than one week from the day the employee leaves work as a result of the injury, no indemnity whatever shall be recoverable.[1.]

The weekly indemnity due on the eighth day may be withheld until the twenty-second day after he leaves work because of the injury. If recovery from the disability shall then have occurred, such first weekly indemnity shall not be recoverable; if the disability continues still, it shall be added to the weekly indemnity due on said twenty-second day and be paid therewith.[1.]

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1. Wisconsin Law, Section 102.09- 2 (d), 9th and 10th.

5. Child Labor.

Compensation is doubled the amount otherwise recoverable if the injured employee is a minor of permit age, working without a written permit.

If a minor is injured at work for which the Industrial Commission has adopted a resolution that permits shall not be issued, the amount is treble the amount otherwise recoverable if he is of permit age.

The amount is treble also in case the minor is of permit age and is working at prohibited employmant when injured.

A permit unlawfully issued or unlawfully altered after issuance, without fraud on the part of the employer, is considered a permit within the provisions of this law.

Liability shall exist for all loss of wage if the amount recoverable for temporary disability does not cover it.[1]

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1. Wisconsin Law 1927, Sec. 102.11, page 28.

6. Aliens.

If an alien for whose injury or death compensation is payable, leaves a dependent or dependents residing outside the United States, the Compensation Funds are to be administered by the American Consular officer of the country of which the dependents are citizens. Either he or his designated representatives residing within the state, shall except as otherwise determined by the Industrial Commission, be the sole legal representative of such deceased employee and of his dependents in all matters pertaining to their claims for compensation.[1.]

The receipt and distribution of compensation funds are made on the order of the Industrial Commission. The consular officer may be required to furnish a "good and sufficient bond conditional upon the proper application of all moneys received by him." Before such bond is discharged he must file with the Commission a verified account of the items of his receipts and disbursements of such compensation. The consular officer must also make interim reports to the Industrial Commission from time to time as it may require.

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1. Wisconsin Law 1927, Section 102.19, page 37.

OCCUPATIONAL DISEASES AND THEIR RELATION TO WORKMEN'S COMPENSATION

Many occupations have injurious effects on the physical condition of those engaged in them. The health of those who work with the poisons, such as lead, arsenic, mercury, pixric acid, etc., or those infectious materials, etc., may be impaired seriously as the result of their work. The occupation is now recognized as of the very first importance as a factor in the causation of disability and even of death. Dr. Edsall has shown that in his clinic at the Massachusetts General Hospital many of the conditions for which treatment is sought by men of working ages are the effects of occupation.[1.] Other industrial clinics are reporting similar results. With their attention directed to occupation as a possible factor, industrial physicians are able to diagnose a great many obscure cases which previously had puzzled even the most competent clinicians. In this way they discover a great many more cases of disease of occupational origin than had before been thought possible. Thus, in 1917 about 150 cases of lead poisoning were discovered at the Massachusetts General Hospital, which are more than were recorded by this clinic during the five-year period prior to the adoption of the more intensive methods of study. It is generally recognized that patients come to physicians with pains and complaints of an indefinite character, and it is only when con-

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1. Monthly Labor Review of the U.S. Bureau of Labor Statistics Dec. 1917, pp. 169-185.

sideration is given to the occupation and its possible effects that many of these cases are cleared up.[1.]

Industry is an acknowledged boon to any country, but its existence depends on the balance maintained between the value of the product and the cost of production. Foremost in this cost of production is possible damage to the health of its workers. Between the prohibition of the use of white phosphorus on account of its disastrous influence on health match making and the best industrial conditions lie all degrees of health hazard, from the general influence of the presence of organized industry on the health of the community to the influence of the most specific types of poison used in the various trades.[2.]

Phossy jaw, a particularly loathsome disease has been practically eliminated by discontinuing the use of white phosphorous in the making of matches. Laws against poisoning in mercury-using manufacturers have been passed by New York, California, Michigan, Illinois, Connecticut and Wisconsin. A number of skin diseases caused by occupational factors are listed by Dr. J. L. Bowen:

Housemaids and houseworkers contribute a very large number of cases. These persons suffer from an eruption like that of eczema with blisters and red areas and is probably caused by the use of strong soap, water washing

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1. Bulletin of U.S. Bureau of Labor Statistics, April 1922-1.
2. Cunningham, J.C.- The Chemist and His Contribution to Industrial Health- "The Nation's Health", Sept. 1925.

powders and cleansing alkalies. Fordyce of Bellevue Hospital states that about one-third of the occupational diseases seen there are in people who constantly use soap, water and sometimes strong alkaline preparations as cleansing agents.

It has frequently been observed that bakers suffer from an irritation of the hands and forearms, caused by contact with the moist dough and the heat in the surrounding rooms. The lesions are usually described as circumscribed crusted patches, and are most commonly found upon the hands.

Hairdressers and barbers are exposed to contact with soap, water, alcoholic solutions, cantharidal preparations, aniline hair dyes, quinine hair tonics, etc. and often rub these materials into the skin or scalp with the hands. The lesions are those of an eczema of the fingers and hands.

Eczematous eruptions of the hands and arms of candy workers was one of the first forms of trade dermatoses to be recognized. The exact cause has never been determined, but the condition disappears when the subject does other work, and reappears when the former occupation is resumed. Certain French writers have also described an inflammation of the nails seen in sugar workers.

Builders, masons, brickmakers, laborers are subjected to skin troubles by reason of their occupations and ex-

posure to the weather. Varicose veins and ulcers are seen in those who are used to standing for long periods of time. Builders, masons, plasters, whitewashers and paper hangers often develop lesions caused by exposure to lime and cement. Brickmakers often exhibit an irritation of the skin of the palms.

Tobacco workers are often troubled by chronic and stubborn eruptions of the hands. The heat, moisture and unfavorable hygienic conditions are probably the main causative factors.

"Polishers' itch" commonly attacks the hands and fingers of furniture polishers and may be caused by methyl or impure alcohol or impure benzine. Blaschko remarks that before the use of denatured spirit in 1879, there were few skin affections in polishers; he believes that pyridin, a common denaturing agent, is probably the causative factor.

Fingers, hands and forearms of bartenders and liquor dealers are often affected by constant immersion in water and contact with strong soaps.

Numerous cases of skin trouble have been reported from this trade. In speaking of the various dangerous processes, Knowles says in part: Helpers in type foundries are forced to handle irritating oils; electrotypers use lye to wash off forms and place their moulds in a wash of bluestone and muriatic acid. Stereotypers use a

lead mold without the copper surface. Eruptions are, therefore, most commonly seen in the helpers, electrotypers and stereotypers. Recently benzine, lye, petroleum and pine oil have been used as cheap substitutes for turpentine oil for removing ink from the printing forms. These substances are either themselves directly poisonous to the skin or they contain irritating impurities. Oestreicher of Berlin has seen skin lesions caused by the wearing of gloves cleaned by benzine and he has also seen harmful effects from cleansing the skin with benzine.

Workers with metals and minerals (silver polishers and burnishers) use a "rouge" composed of "quicksilver", iron and wax, which has been found very irritating to the skin. Bichromate of potash and cyanide of potash have also been widely used and have produced cutaneous trouble.

Compounds containing arsenic, mercury and chromium are commonly used by dyers and aniline workers, dressmakers and photographers. These metallic substances are powerful cutaneous irritants. Bichromate of potash is often used by dyers, electricians and photographers. Often the wearers of garments, clerks and milliners are affected. Linen dyers, tanners and aniline workers are also included in this group.

The use of tetryl by workers in high explosives causes a deep yellow or apricot color of the skin and

hair in those who are exposed to it; with this there is a blister-like skin eruption with a severe itching. T N T (trinitrotoluene) causes a severe dermatitis of a papulo-vesicular type affecting mainly the wrists and neck. Lyddite is known to produce a yellow color and eruption on the face, hands and fingers.

Certain species of wood have been shown to have poisonous effect upon those working with them. These woods are mainly those of foreign species; satinwood, teakwood, ebonywood, cocabolawood and others. The unprotected portions of the skin are most affected. The active agent is said to be alkaloid chloroxylonine.

As early as 1875, Purdon described an eruption on the arms of linen workers in the linen mills of Belfast, Ireland. The eruption was of a pustular type, with a shotty feeling to the touch, somewhat resembling smallpox. In 1885 Leloir chronicled the finding of a red and weening type of skin eruption in spinners of Lille. It was noted that the hands of workmen were continuously kept moist while washing the flax; the water also contained a mucilaginour substance yielding butyric and lactic acids and carbonate of lime on analysis. Leloir has also described the occurrence of an irritation of the hairs in spinners, due to contact with an irritating oil with which the looms were soaked. White published in 1887 a very valuable and comprehensive monograph on Dermatitis Venenata and estimated that

about 60 plants in the United States were capable of producing an irritative reaction on the skin of florists. Among these may be mentioned: poison ivy, poison oak, poison sumach, two species of nettle, Japanese primrose and other less well known forms. Lacquer is obtained from a species of rhus which is a close relative of the plant in this country. Japanese wall papers and varnishes containing this substance have given rise to an irritative skin eruption. A recent outbreak of "Mah Jongg" skin eruption probably owes its origin to this source. Bitter orange, the vanilla plant, and quinine have also been known to cause definite irritation of the skin.

Stern divided the skin affections of musicians into three classes, (1) A hair irritation of violinists, affecting the lower part of the left side of the face, against which the violin is pressed, (2) an eczema of flutists, a moist skin eruption of the lips and cheeks, (3) lip affections of trumpeters manifested as an abortive boil or horny growths.

Constant use of soap, water, carbolic acid, bichloride of mercury, formalin, creolin and alkaline solutions by physicians, surgeons and nurses has caused a countless number of cases of obstinate skin eruptions. Dentists are also affected. Skin infections have also been passed from patient to attendant.

Impetigo contagiosa (contagious eruptions), carbuncles and boils have been observed on butchers, cooks and others. Tinea trichophytina and other parasitic disorders have been seen as instances of contagion from domestic animals and occuring in children who play with cats and dogs. Foot and mouth disease, anthrax, glanders, actinomycosis, tuberculosis and erysipeloid have all been observed in persons having had contact with animals.[1.]

In the registration area of the United States there were, during the year 1920, 120 deaths certified as due to chronic lead poisoning. Such figures, however, by no means indicate the total mortality resulting, directly and indirectly, from this disease. It is common experience that diseases of the kidneys and lungs are frequently associated with lead poisoning, and it is certain that lead plays an important, undoubtedly a very large, role in the mortality due to diseases of these organs. The clinical evidence is that the absorption of lead is an important factor in sclerotic changes in the blood vessels and in many other diseases incurred during exposure to lead, and that in such cases deaths are seldom recorded as due to lead poisoning but are ordinarily ascribed to some other cause.

In New York State there are reported annually from fifty to 100 cases of industrial lead poisoning with an average of about eleven deaths. Table 2 gives the industrial figures in that state for a period of nine years.

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1. Alameda County Public Health News- Diseases of the Skin caused by Occupational Factors.

Based upon these figures it has been estimated that there are in the United States at least 2000 cases of chronic lead poisoning annually, possibly a much larger number.

Available evidence indicates that the chief means by which lead is introduced into the system is through the respiratory tract, either as fumes or as dust. Part of the lead is no doubt deposited in the mouth and pharynx and swallowed, and part is drawn into the lungs. In some cases lead is introduced into the mouth on the hands and becomes mixed with food, but this method plays a secondary role as the cause of disease. A third method, the absorption of lead through the skin is, theoretically, a possible cause of lead poisoning, but if this plays any part at all in the production of clinical symptoms, it must be quite insignificant.[1.]

Of the general influence of industry on the health of the community, tuberculosis provides some indication. During the past sixty years the tuberculosis death rate has been falling gradually, by 67 per cent in females and by 50 per cent in males. The male death rate at and past middle life has fallen more slowly, especially in industrial areas where there are usually more men than women in industry, but in areas of Scotland and Denmark, where more women than men are employed, the tuberculosis death rate among women is higher, also, among the older women

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1. Burnham, A.C.- The Prevention of Industrial Lead Poisoning in English Factories, The Journal of Industrial Hygiene, June 1923, pages 56,57.

who were the first to leave. In printing, tailoring, and boot making the tuberculosis death rate is high, whereas other causes of death are about normal considering the general population. Among a very large group in the United States the mortality from tuberculosis of lungs in the dusty occupations was 41 per cent in excess of the mortality from tuberculosis in the non-dusty occupations.[1.]

The medical examiner should, therefore, be very careful to see if any of the usual diagnostic signs of poisoning, dust, heat, or other hazards which are known to be inherent in occupations are in evidence among their patients where no other explanation of the case is readily available. In the case of those exposed to lead, such as employees of storage-battery plants, white-lead workers, paint mixers, painters, etc. the blue line on the gum, the pale, sallow appearance and the trembling fingers are significant as indications of chronic lead poisoning, and the physician should look for these signs. Physical symptoms and conditions which ordinarily might be passed by, in this way become very important if they point to the possible effect of the occupation.[2.]

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1. Cunningham, J. G. "The Chemist and His Contribution to Industrial Health", Nation's Health, Sept. 1925 p.599
2. U.S. Department of Labor, Bureau of Labor Statistics Occupation Hazards and Diagnostic Signs, Bulletin No.306

A first step toward protection against such occupational diseases lay in securing a law requiring physicians to report to the State Labor Bureau their cases of industrial diseases.[1.] In some cases harmful materials have been banned by cooperation of the manufacturers using them as in the case of ethyl gasoline. In other instances laws have had to be passed prohibiting the use of the substance in question.

While public opinion is being educated to the extent of passing laws concerning these diseases, or if the industries are of such a nature that their use cannot be prohibited, what is to become of the sufferer who through no fault of his own has contracted the disease? Is he not suffering from injury growing out of and incidental to his employment? Ought he not to receive compensation for this as for any other injury under the Workmen's Compensation Law? Many states recognize this fact and have included provision for occupational diseases in their laws. Wisconsin law, Section 102.35, specifically extends her law to include occupational diseases.

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1. Bates, Mrs. Lindon W. - Mercury Poisoning in the Industries of New York City and vicinity- Bulletin of National Civic Federation, New York and New Jersey Section

WORKMEN'S COMPENSATION LAW OF WISCONSIN-- AMENDMENTS

Passed in 1911.

The Legislative Committee of 1909 in its report stated the objects of the Compensation Act as follows:

1. To furnish certain prompt and reasonable compensation to the injured employee.
2. To utilize for injured employees a large portion of the great amount of money wasted under the present (liability) system.
3. To provide a tribunal where disputes between employer and employee in regard to compensation may be settled promptly, cheaply and summarily.
4. To provide means of minimizing the number of accidents in industrial pursuits.

These objects have been realized in the administration of the Compensation Act in a very large measure, as will be definitely shown in our forthcoming annual report.

1913 Amendments.

The Amendments of 1913 are intended to accomplish more effectively the purposes outlined by the legislative committee.

The first two defences, assumption of risk and fellow servant, were abrogated by the law of 1911. The third, contributory negligence, was taken away by the legislature of 1913. As the common law stands, if employer is guilty of

negligence proximately resulting in injury to his workmen, he has no defence in an action for damage. It will simply be a matter of a jury assessing the amount. There can be no recovery, however, unless the employer is guilty of negligence, either by himself or his agents.

Section 2394-3 dealing with contributory negligence was unnecessary since the abolition of defence of contributory negligence and this provision of chapter 50 was unnecessary and was dropped out of the amended act and the succeeding sections were renumbered. Prior to June 23, 1913 the Act contained the defence of wilful misconduct, but the amended Act leaves as a defence against compensation only "intentionally self-inflicted injuries." This language is an anomaly. If injury is intentionally self-inflicted it cannot be the result of an accident. The injury to be compensated must be accidentally received while the employee is performing service growing out of and incidental to his employment.

Section 2394-5. Election by Employer. Until September 1, 1913 an employer desiring to accept terms of the Act must file his acceptance with the Industrial Commission. On September 1, 1913 and thereafter this method of election is reversed and the employer of four or more persons in a common employment is deemed to have accepted the Act unless he files notice to the contrary with the Commission before that date. This provision simplifies the procedure.

By the law of 1913, Section 2394-3 the Act was amended as applying to railroad trainmen. They may come under the law only by voluntary written acceptance on the part of both the railroad and its trainmen; other employees of railroad companies may come under this Act under the same conditions as apply to other private employees. This Act will not apply, however, to employees of a railroad company who may be injured while both employer and employee are engaged in interstate commerce at the time of the accident.

Section 2394-9. Scale of Compensation.

Indemnity Limitations (d) In case of permanent total disability the aggregate indemnity for injury to a single employee caused by a single accident shall not exceed six times the average annual earnings of such employee. Out of 7000 accidents reported to the Commission in 1912, there were only four which caused persons to be permanently, totally incapacited. So it is evident that increased cost of compensation, by reason of this Amendment, is small and at the same time it grants an increased measure of relief for those greatly in need.

Section 2394-9. Schedule of Fixed Benefits.

In cases in this schedule the compensation to be paid, subject to provisions of this Act for maximum and minimum payments shall be 65% of average weekly earnings of employee for the periods named in the schedule.

The schedule amends the law of 1911 and like some other states, New Jersey, Michigan and Minnesota, it makes definite

allowance for certain definable injuries. This will simplify the administration of the law and it is generally thought it will make it more satisfactory, both to employer and employee. Wisconsin differs from other states in that the allowance for minor injuries is proportionately less, while the allowance for major injuries is proportionately more. Compensation laws are based upon loss of wages and it is believed that the amount fixed for minor injuries will substantially take care of the loss of wage. By giving more for major injuries and less for minor injuries, we secure a more equitable schedule.

Facial Disfigurements. If an employee is seriously disfigured about the face or head, the Commission may allow such sum for compensation as it may deem just, not exceeding $750. This provision is not contained in the law of 1911. It is known that a person seriously disfigured about the head or face may suffer substantial loss of wages; first because employers do not look with favor upon such an employee and second, it is well known that such disfigurement tends to abash and discourage the injured workman. Similar provision is found in the Compensation Act of Illinois.

Reductions for Age. In case of permanent injury to an employee who is over fifty-five years of age the compensation herein shall be reduced by 5%; in case he is over sixty years of age by 10%; in case he is over sixty-five years of age by 15%. This provision, not found in the law of 1911, is put in this Act by way of experiment.

In England and other countries, aged workmen are discriminated against under the Compensation Act because employers feel that they are more subject to accident and are slower of recovery from accident. This provision in a manner tends to equalize the conditions. So far as the workman is concerned, it carries out the theory of damages under the common law; that is, a young man under the common law would be entitled to more damages in case of permanent injury than an older man who would not have to suffer the handicap for so long a period.

Section 2394-10. 1. This is an Amendment which seeks to make the benefits under this Act fairly comparable to the proposed Federal Compensation Act so far as it applies to railroad trainmen. These men are engaged in an extra hazardous occupation, the hazards of which are largely beyond their control. Railroad trainmen have been favored heretofore in the law of negligence.

Section 2394-10. 2. This concerns other suitable employments. Under provisions of the 1911 Act so long as an employee sustained a loss of wage in his employment (at time of accident) he could claim compensation regardless of the fact that he might earn as much or more than he was earning at the time of the accident in some other suitable employment. With this Amendment, compensation is measured by his "loss" of wage in any suitable employment.

Section 2394-10-3. (c) Under provisions of the 1911 Act the death benefit is divided equally among the surviving children regardless of age and degree of dependency. With this Amendment the degree of dependency will be taken into consideration and a more equitable distribution of death benefits made.

1915 Amendments.

Section 2394-1, Subdivisions (1), (2), (3) of subsection 1 of Section 2394-1 of the statutes shall not apply to farm labor. Amendment effective July 1, 1915.

Section 2394-9. Refers to Death Benefits. In case the deceased employee leaves no one wholly dependent upon him for support, but one or more persons partially dependent, the death benefit shall not exceed four times the amount devoted by the deceased during the year immediately preceding his death to the support of such dependents, etc. The new part reads, "Where by reason of minority, sickness, or other causes during such year, the foregoing basis is unfair or inadequate, the death benefit shall be such sum as the Commission may determine to be fair and just, considering the death benefits allowed in other cases where such untoward causes do not exist.

Schedule of Fixed Benefits, 5 (e)

For all other injuries to the members of the body or its faculties which are specified in the foregoing schedule resulting in permanent disability, though the member

be not actually severed or the faculty totally lost, compensation shall bear such relation to that named in the schedule as the disabilities bear to those produced by the injuries named in the schedule. Indemnity in such cases shall be determined by allowing weekly indemnity during the healing period resulting from the injury and the percentage of permanent disability resulting thereafter as found by the Commission. (Amendment effective July 10, 1915.)

Section 2394-15. Reasonableness of Medical Bills. The Industrial Commission shall have jurisdiction to pass upon the reasonableness of medical and hospital bills in all cases of dispute where compensation is paid, in the same manner and to the same effect as it passes upon compensation. (Amendment effective June 15, 1915.)

Section 2394-18 (a). Whenever an award is made by the Commission against any county, city, village or town, the person in whose favor it is made shall file a certified copy thereof with the county, city, village or town clerk, as the case may be. Within twenty days thereafter, unless an appeal is taken, such clerk shall draw an order on the county, city, village or town treasurer against which the award was made for the payment of the amount specified in the award. If upon appeal such award is affirmed in whole or in part, the order for payment shall be drawn within ten days after a certified copy of such judgment is filed with the proper clerk. If more than

one payment is provided for in the award of judgment, orders shall be drawn as the payments become due. The provisions of any statute relating to the filing of claims against, and the auditing, allowing and payment of claims by counties, cities, villages and towns shall not apply to the payment of an award or judgment under the provisions of this section. (Amendment effective August 23, 1915.)

1917 Amendments.

Section 2394-1. Amendment changing word "four" to "three" has the effect of abrogating the three defences (fellow-servant, contributory negligence, and assumption of risk) as to the employer of three persons. It puts him in the same class as the employer of four or more.

Section 2394-7. This Amendment is a rule of construction intended to remove possible doubt as to the coverage of those persons under compensation who may have some so-called official designation, but whose actual duties are of a type which stamps them as employees rather than officers with prime authority, thus "No officer of the state who is subject to the direction and control of a superior officer or officers of the state, and no officer of any county, city, town, village or school district of the state, who is subject to the direction and control of a superior officer of such county, city, town, village or school district, while engaged in

the performance of duties for which no remuneration is received from any other source than the state or from such county, city, town, village or school district, shall for the purposes of Sections 2394-3 to 2394-31 inclusive be deemed an official.

By 2394-7-4, all helpers and assistants of employees, whether paid by the employers or employee, if employed with the knowledge, actual or constructive, of the employer and also including minors of permit age or over. This Amendment is intended to make an employer liable for compensation to employees of other employees, employees of piece workers, employees of agents, etc. where such employer has knowledge of the employment.

It also brings within the Act those minors of permit age injured while working without a permit. The Supreme Court in the case of Stetz versus Mayer Boot & Shoe Company, 163 Wisc. 151 held that minors of permit age, working without a permit, were entitled to common law damages and not to compensation.

Section 2394-8. Election by Employee. By this Amendment, for the state, its sub-divisions and the employees of each, the law is compulsory. The law is an elective act to all private employers and their employees. It would follow that policemen and firemen, being municipal employees, are compulsorily brought under the Act. The Act is made elective instead of compulsory as applied to policemen and firemen.

Section 2394-8, 2, 3. This sub-section is amended to the effect that an employee,who has once filed a non-election, may change his status by giving his employer a written election to become subject to the Act. The employer is to give the Industrial Commission a copy of such notice.

Section 2394-9. Scale of Compensation.

Medical Attendance. By this Amendment the employee's right to medical treatment is extended beyond the ninety day limit where such treatment is calculated to reduce compensation disability. It also requires the employer to furnish necessary artificial members as soon as the healing period has ended, and the limbs may be properly fitted.

Indemnity Limitations. For each successive yearly age group beginning with thirty-two years, the maximum limitation shall be reduced by three months until a minimum limit of nine years shall be reached. Under the old law a young man of twenty-one years received no larger amount than the man of fifty-four years. The purpose of this Amendment was to recognize the longer expectancy of the younger man and graduate his recovery accordingly.

Section 2394-9. Schedule of Fixed Benefits. A clause to 1. Make definite and certain that allowances

provided in the schedule of specific injuries, (next following) cover and compensate both the healing period and permanent disability accruing after amputation and 2. Makes clear that the schedule allowance becomes applicable only from the date of amputation.

The 1917 Amendments have the purpose of materially increasing the disability allowance for those specific injuries requiring amputation. Minor amputations rarely cause any permanent wage loss, that is any wage loss beyong the healing period. After the wound heals, the persons so injured usually return to the same employment in which injured and at the same wage. Major injuries, on the other hand, usually cause serious wage loss and usually force the injured party to change his trade or occupation. They force him to abandon the use of the skill which years of experience have given him. Under the 1913 schedule the minor injuries were better compensated than the major injuries, so the larger increases are given to the major injury provisions. Only slight changes are provided in the allowance for eye and ear injuries.

Multiple Injuries.

In case an accident causes more than one permanent injury specified in this sub-section to the hands or feet, the disability allowance for each additional injury, in the order of the severity of such injuries from minimum to maximum shall be increased as follows: For the first additional injury the allowance specified in this sub-

section plus ten per cent, for the second additional injury, and for each other additional injury, the allowance specified in this sub-section plus twenty per cent. In no event shall the compensation for more than one permanent injury to members of a hand or foot resulting from one accident extend the allowance for the amputation of the entire hand or foot as the case may be.

This Amendment has the effect of increasing the allowances to the person who has sustained injuries to two or more of the constituent parts of the hands or feet, on the assumption that the disability in such cases increases out of proportion to the sum total of the schedule allowances. The application of this clause to the adjustment of the injuries covered should tend to better equalize the schedule allowance.

Section 2394-9. Unlawful Employment of Minors.

By this Amendment all classes of minors recognized by common law, i.e. under sixteen years without permit, but working at prohibited employment and over sixteen at prohibited employment, were brought under compensation, their measure of recovery was trebled in order to discourage their employment contrary to law and the employer is required to insure their liability.

Section 2394-10. In determining daily wage, eight hour day only is recognized unless by agreement or custom a lesser number of hours' work constitutes the full day's service for such day. Subject to the maximum limitation the average annual earnings shall in no case be taken at

less than the actual annual earnings.

Section 2394-15. Contributions by Employees. No employer may make any deduction from wages of employee to build up fund out of which to provide them with medical or hospital attendance. By divisions 3 and 4 the practice is forbidden. The expense must be borne by the employer.

Section 2394-17 m. This section provides for authoritative representation of alien dependents, in compensation proceedings. It also provides for adequate accounting to the commission by such representatives.

Section 2394-18 m. Delayed payments bear interest at the rate of 6%. If the employer or his insurer is guilty of inexcusable delay, payments are increased by 10%.

Section 2394-25. An injured employee has the right to collect damages from a physician who has treated him unskillfully. In practice, he will likely have recovered compensation from his employer for the disability resulting directly from such unskillful treatment and the amendment provides that his damages against the physician be reduced accordingly.

Section 2394-26. Liability for compensation is not reduced because employee carries insurance and no part of the wages of the employee may be taken to pay insurance premiums against liability under this Act. Appearance of the insurance company in compensation proceedings shall operate as a waiver of the service of copy of the applica-

tion or notice of hearing. The failure of the assured to do or refrain from doing any act required by the policy shall not be available to the insurance carrier as a defense against the claim of the injured employee or his dependents.

An insurance carrier is denied the right to protest liability of the injured party, because the employer may have failed to give the insurance company notice of the injury within the time specified in the policy.

Section 2394-28. The Industrial Commission may release any party from future compensation payment or compel them to guarantee such payment at its discretion if the compensation has extended or will extend over a period of six months or more from date of injury. Guarantee may be made by 1. depositing present value of unpaid compensation upon a three per cent interest discount basis with a bank or trust company designated by the Commission, or 2. by purchasing an annuity in a liscensed insurance company in the state and approved by the Commission, 3. by payment in gross upon a three per cent interest discount basis to be approved by the Commission and 4. by furnishing a bond or other security satisfactory to the Industrial Commission for payment of such compensation as may be due or come due. If for any reason a bond furnished or deposited made thus does not fully protect, the compensation insurer or uninsured employer as the case may be, shall still be liable to the beneficiary thereof.

1919 Amendments.

The most important amendment adopted in 1919 was that increasing the maximum and minimum annual earnings, for the purposes of computing compensation. For the old maximum of $750 ($2.50 per day) a new maximum of $1,125 ($3.50 per day) was substituted.[1] The minimum annual earnings were increased from $375 to $525. This amendment increased the minimum weekly compensation to $6.83 and the maximum to $14.63. The necessity for this amendment was shown by the fact[2] that 87.2% of all employees who sustained compensable accidents during the first half of the calendar year 1919 were earning more than $15 per week, the old maximum for purposes of computing compensation. When this maximum was inserted in the first compensation law of 1911, probably not more than ten per cent of all workmen in the state were earning more than the maximum. With the change in the purchasing power of the dollar and the increase in wages in recent years, this old maximum became very inadequate.

Another important amendment has the effect of making compensatable, in addition to accidental injuries, all other injuries, including occupational diseases which grow out of or are incidental to the employment.[3] Some cases of occupational diseases have heretofore been held

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1. Wisconsin Law 1919, Section 2394-10, page 21.
2. Eighth Annual Report on Workmen's Compensation, July 1, 1918 to June 30, 1919, Table VII, page 17.
3. Wisconsin Law, Section 32, page 40.

to be accidental injuries, but with this amendment all industrial diseases are compensatable.

A new plan was adopted in 1919 for dealing with second injuries which cause permanent total disability, or some permanent disability, which although not total, causes a greater wage loss than is compensated under the schedule of fixed benefits. Under this new plan, in cases in which a second injury causes the loss or total impairment of the hand, arm, foot, leg or eye, employers will pay only the same compensation as for the loss of the first member. The injured employee, however, will receive additional compensation from a special indemnity fund administered by the state treasurer. To this special indemnity fund employers must contribute $150 for each accident causing the loss or total impairment of a hand, arm, foot, leg or eye.[1.] This amendment is intended to prevent discrimination in employment against workmen who have sustained a first serious injury. Heretofore many employers have been reluctant to employ such handicapped workmen, because they might become liable for permanent total disability, if the workmen should be unfortunate enough to have a second serious injury. As the law now stands the second injury will in no case cost the employer more than the first injury. Other amendments to the law in 1919 are listed by sections.

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1. Wisconsin Law, Section 2394-9-6 (a), (b) (c) (d) (e) (f)

Sheriffs, deputy sheriffs, constables, marshals, as well as policemen and firemen are deemed employees and receive compensation as such, providing any sum received from other pension or benefit fund is deducted from the amount paid as compensation.

Any peace officer other than the above mentioned shall be considered an employee while engaged in the enforcement of peace or in and about the pursuit and capture of those charged with crime.[1.]

Section 2394-1, Employer is liable when he has "at the time of the injury" three or more employees.

Section 1921-30 to 1921-36 were created in 1919 to the effect of prohibiting discrimination in its writings between risks or classes of risks or using any system of rating which results in discrimination. Each company writing any kind of liability insurance must file its rates and manual of classification of risks for each kind of liability insurance written by it.

Sub-section 1 of Section 2394-9 of the statutes is amended so that Christian Science treatment in lieu of medical treatment, medicines and medicinal supplies may be given at the option of the employee, but employer may elect not to be subject to this provision by filing written notice of such election with the industrial committee.

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1. Wisconsin Law 1925, Section 2394-7, part 2, page 7.

No compensation shall be payable for the death or disability of an employee if death be caused or disability aggravated by unreasonable refusal or neglect to submit to or follow any competent and reasonable surgical treatment.

The Industrial Commission may require security from employers who desire to carry their own risk under the Workmen's Compensation Act.

Still another provides that if in cases of accidents to minors who are unlawfully employed, treble the amount recoverable if less than the actual loss of wage, the employer is liable for the wage loss.[1.]

It is also provided that employers who affirmatively elected not to accept the provisions of the Workmen's Compensation Act shall post and maintain printed notice of such non-election on the premises at all times, upon a form furnished by the Commission.

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1. Wisconsin Law 1925, Section 2394-9, part 7(c) page 20.

1921 Amendments.

1. In the definition of an employee in the 1921 Act a slight change is made in Section 2394-7, part 4. Any person whose employment is not in the usual course of the trade, business, profession or occupation of his employer is not considered an employee under the Act "unless such employer has, by an affirmative election, in the manner provided-- specifically elected to include domestic and other employees under coverage of the Act."[1.]

2. Under Medical Attendance regarding a choice of physicians, Section 2394-9, "The employee shall have the right to make choice of his attending physician from a panel of physicians to be named by the employer, and failure of the employer to maintain a reasonable number of competent and impartial physicians ready to undertake the treatment of the employee and to permit the employee to make choice of his attendant from among them shall constitute neglect and refusal to furnish such attendance and treatment."[2.] By a reasonable number may be meant only one, if only one physician is available in the community. Three should constitute enough unless the region contains a first class city, in which case a panel of not more than five is to be maintained.

3. Regarding Weekly Indemnity, "During the period of partial disability, such proportion of the weekly indemnity rate for total disability as the actual wage loss of the injured employee bears to his average weekly wage

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1. Wisconsin Law 1921, Section 2394-7, part 4, page 7.
2. Wisconsin Law 1921, Section 2394-9, part 1, page 9.

at the time of his injury, shall be paid to the injured employee.[1]

4. Certain reductions for age are made by these amendments. If the employee when he receives a permanent injury is over fifty-five years, the compensation accruing for the permanent disability is reduced by five per cent, in case he is over seventy years of age by twenty per cent, in case he is over seventy-five years of age by twenty-five per cent.[2]

5. Perhaps the most interesting part of the 1921 amendments is that part referring to Rehabilitation. Subject to certain conditions and limitations, an employee may in addition to his other indemnity receive a sum sufficient to maintain him during rehabilitation. He must undertake the course of instruction within sixty days from the date that he is sufficiently recovered to do so, or as soon thereafter as the state board of vocational education shall provide the opportunity for his rehabilitation. He must continue the training with such reasonable regularity as his health and situation will permit. The maintenance is not to exceed ten dollars per week during training, nor to exceed a period of twenty weeks in all.

The Commission shall determine the rights and liabilities of the parties under this section in like manner

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1. Wisconsin Law 1921, Section 2394-9, part 2, page 11
2. Wisconsin Law 1921, Section 2394-9, part 5 g, page 17.

and with like effect as it does other issues under compensation.[1]

6. If a minor is permanently injured, the compensation is to be given, not on the basis of the low wage earned as a minor, but on the basis of the wage that such minor, if not disabled, would earn after attaining the age of twenty-one years.[2]

7. Section 2394-11. If within the thirty day period, actual notice of the injury was given to the employer or to any officer or manager of an employer or company or to any other person designated by the employer for the purpose of receiving reports of injury, this is equivalent to the written notice required within thirty days. The name of the employee or other representative designated by the employer to receive reports of injury shall be posted by the employer in one or more conspicuous places.

8. Section 2394-12-2 is intended to eliminate contentions which have arisen in death benefit cases over the admission of the findings of physicians at post-mortem examinations conducted under circumstances which made it impossible or impractical for an interested party to have a physician present to observe the findings, by laying down conditions which must be observed to make such findings admissable as evidence.

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1. Wisconsin Law 1921, Section 2394-9m, page 21.
2. Wisconsin Law 1921, Section 2394-10e, page 23.

First, the party offering the testimony must have endeavored in good faith to advise the opposing party of the time and place of the autopsy so as to make possible the attendance of the opposing party at the autopsy; second, that the autopsy was performed for a purpose expressly authorized by statute. The amendment also authorizes the commission to refuse to make findings in those cases where it feels that an autopsy is reasonably required to determine the cause of death, until such time as the parties consent to the examination.[1.]

In the past the commission was without authority to mitiate any proceeding for the purpose of determining the rights and liberties of the parties. An employee would hesitate to institute a proceeding against how own employer and might forego his right to compensation because this was necessary in order to secure it. By this Amendment, Section 2394-16-2, if the commission shall have reason to believe that the liability of any party for the payment of compensation shall not have been discharged, it may of its own motion give notice in writing to the parties, in the manner provided for the service of an application, of a time and place when formal inquiry will be had for the purpose of determining the facts. Such notice shall contain a concise statement of the matter to be considered. Thereafter all other provisions governing proceedings on application shall attach insofar as the same may be applicable.

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1. Wisconsin Law 1921- Section 2394-12-2, page 27.

The findings and award of the Commission shall have the same effect as it might have done in proceedings upon application of a party.[1.]

9. In all proceedings upon claims for compensation against the state, the attorney general, personally or by an assistant, may appear on behalf of the state.[2.]

10. Where payment is delayed the ten per cent increase is made the burden of the party responsible for the delay. Thus, if the employer neglects to give the insurance carrier notice of the accident and unreasonable delays in payment result, the employer must pay. If the insurance carrier is guilty of causing the delay, he must pay the increase. Withholding amounts unquestionably due because the injured man refuses to execute a release of his right to claim further benefits, will be regarded as inexcusable delay in the making of compensation payments.[3.]

Whenever an award is made against the state the attorney general may bring an action for review thereof. If such an action is started by the attorney general, the governor appoints special counsel to uphold the commission's award.[4.]

In case of appeal from decision of circuit court, the state shall be deemed a party aggrieved, whenever a judgment is entered upon such a review confirming any order or award against it.[5.]

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1. Wisconsin Law 1921, Section 2394-16-2, page 30.
2. Wisconsin Law 1921, Section 2394-16-3, page 31.
3. Wisconsin Law 1921, Section 2394-18 m.
4. Wisconsin Law 1921, Section 2394-19-3, page 35.
5. Wisconsin Law 1921, Section 2394-21, page 36.

The Revocation of the exemption of an employer might be made only for financial reasons. Now an amendment makes it possible for the commission to revoke the exemption where the employer fails in any of the other requirements of the compensation law and of the rules of the commission pertaining to the administration of the act.[1.] Its purpose is to make it impossible for employers to procure an exemption from insuring their liability and then turning around and insuring their risk in a company which has not been licensed to do business in Wisconsin at rates which are discriminatory. Employers insuring their risk with an unlicensed company in effect assist such companies to violate the laws of this state.

Insurance companies have frequently contended that the policy issued did not cover the whole risk of the assured. This contention was usually made where there was a specific exemption in the policy or where the classifications mentioned in the policy did not cover all the operations, and the insurer claimed that any operations not specifically mentioned were excluded from coverage. The uncertainty to which this gave rise is done away with by Section 2394-27 which provides specifically that every contract of assurance hereafter written shall be considered to grant full coverage of all liability under the

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1. Wisconsin Law 1921- Section 2394-24-2 pages 38, 39.

Compensation Act, notwithstanding any agreement of the parties to the contrary, unless the assured has first obtained special consent to insure only a part of the risk.[1.]

The institution of a forfeiture proceeding against an employer who has failed to insure his risk has not at all times been sufficient to bring about his speedy compliance with the law. In some cases, in spite of pending forfeiture proceedings, employers have continued to employ men without the requisite insurance coverage. An amendment of 1921 makes possible the issuance of injunctions prohibiting them from employing any person until they have insured their liability. This should prove an adequate remedy against such flagrant violations of the law.

1923 Amendments.

By the 1923 Amendments the list of employers is extended to include sewer districts, drainage districts and other public or quasi public corporations.[2.]

In determining the number of employees in the common employment of an employer not engaged in farming, farmers or farm laborers working along with the employees of an employer not engaged in farming shall be counted.

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1. Wisconsin Law 1921, Section 2394-27-1, page 41
2. Wisconsin Law 1923, Section 102.04, part 1, page 4.

Any employer who enters into a contract for the insurance of the compensation provided under the law or against liability therefor, is deemed to have elected to accept its provisions.[1.]

A working member of a partnership receiving wages irrespective of profits from such partnership, shall be deemed an employee within the meaning of the Workmen's Compensation Law.[2.]

In a panel of physicians for medical attendance, partners and clinics are deemed one physician.[3.]

In case of permanent total disability aggregate indemnity for injury to an employee caused by a single accident shall be weekly indemnity for the period that he may live, not to exceed, however, nine hundred weeks for all persons under thirty-one years of age. For each successive age group, beginning with thirty-one years, the maximum limitation shall be reduced by sixteen weeks until a minimum limit of two hundred and sixty weeks shall be reached.

In cases of permanent partial disability, aggregate indemnity shall bear such relation to the aggregate indemnity for permanent total disability as the nature of the injury bears to one causing permanent total disability.[4.]

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1. Wisconsin Law 1923, Section 102.05, part 3, page 5.
2. Wisconsin Law 1923, Section 102.07, part 4, page 8.
3. Wisconsin Law 1923, Section 102.09, part 1, page 10.
4. Wisconsin Law 1923, Section 102.09, 2d, page 11

A limitation is placed on the death benefit in that it shall not exceed the maximum amount which might have accrued to him for permanent total disability if death had not ensued.[1.]

A long amendment provides that the commission shall determine what amounts might reasonably have been expected by partial dependents if there had been no accident proximately causing death of employee. Aggregate benefits in case of such injured employee shall not exceed twice the annual earnings of the deceased unless deceased has contributed to support of such dependents during the year immediately preceding his death. In such case the aggregate indemnity must not exceed four times his average annual earnings. Where there is more than one dependent the weekly benefit is to be apportioned according to their relative dependency.[2.]

An additional death benefit is paid for each dependent child of the wife or husband deceased according to schedule,[3.] as follows: a child one year of age or under gets the equivalent of five-sevenths of the average annual earnings of the deceased. For each successive yearly age group the amount is reduced by one-fifteenth with no allowance for a child over fifteen

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1. Wisconsin Law 1923, Section 102.09, 3a, page 13.
2. Wisconsin Law 1923, Section 102.09, 4m, a, page 14.
3. Wisconsin Law 1923, Section 102.09, 4c, page 13.

unless such child is physically or mentally incapacitated from earning, in which case the commission makes such allowance as is necessary. A lawfully adopted child is considered as a child marriage and a posthumous child is considered as a child under one year of age. Dependent children by a former marriage are treated as children of the surviving spouse. The benefit awarded to the surviving spouse is not to exceed four times the average annual earnings of the deceased employee.[1.]

In case no dependents are left the employer or insurer shall pay into the state treasury an amount, which when added to the sums paid or to be paid on account of partial dependency, shall equal four times the average annual earnings of the deceased, such payment into state treasury in no case to exceed one thousand dollars. This money with all accrued interest appropriated to the industrial commission for the discharge of all liability for additional death benefits.[2.] Additional death benefits, accruing at the rate of ten per cent of the surving parent's weekly indemnity are awarded by the commission to surviving parent, guardian or other person best calculated to conserve the interests of the child.[3.]

The commission must set aside in the state treasury suitable reserves to carry to maturity the liability for additional death benefit.

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1. Wisconsin Law 1923, (4m) (a) (b) (c) (d) page 14.
2. Wisconsin Law 1923 (4M) (f) (g) page 15.
3. Wisconsin Law 1923 (4m) (i) (j) page 15.

In no case may aggregate amount paid exceed the maximum amount that might have accrued to the injured employee for permanent total disability, if death had not ensued.[1.]

A complete major permanent injury schedule is inserted into the Act in 1923 naming the compensation due for specific injuries, also a lesser premanent, partial injury schedule. In case of amputation between joints the compensation is due as if it were at the joint nearest the body.[2.]

In computing dependency in case of minors the indemnity is based on his probable earnings at the age of twenty one. "Unless otherwise established his earnings shall be taken as equivalent to the amount upon which maximum weekly indemnity is payable."[3.]

In case of several dependents the death benefit is to be divided between such dependents, in such proportion as the commission shall determine to be just considering their ages and other facts bearing on such dependency.[4.]

Regarding notice of injury, "the employer shall not be deemed to have been misled until the employee knew or ought to have known the nature of the disability and its relation to the employment. Because occupational diseases are under the compensation act, an employee may not temporarily know

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1. Wisconsin Law 1923 (4m) (i) (j) page 15.
2. Wisconsin Law 1923- Sec. 102.09- 5(a) page 16-19.
3. Wisconsin Law 1923- Sec. 102.11- 1(e) page 25.
4. Wisconsin Law 1923- Sec. 102.11- 3(c) page 26.

the nature of his disability or its relation to his employment.[1.]

In case of court decisions it shall be the duty of the clerk of any court rendering a decision affecting an award of the commission to promptly furnish the commission with a copy of such decision without charge.[2.]

All exemptions are taken from an uninsured individual employer if an award is made against him. "He shall not be entitled to such award or any judgment entered thereon, to any of the exemptions of property from seizure and sale on execution allowed in sections 2982 to 2984 inclusive."[3.] If the employer is a corporation, the officers are also held individually responsible.

At the request of the Industrial Commission every employer must report to it the number of his employees and the nature of their work and also the name of the insurance company with whom he has insured his liability under the Workmen's Compensation Act. Failure to do this within ten days after request by registered mail constitutes violation of duties toward Commission.[4.]

Insurance Company provisions state that every contract of insurance shall be written for the period of

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1. Wisconsin Law 1923, Sec. 102.12, page 28.
2. Wisconsin Law 1923, Sec. 102.25, 3- page 37.
3. Wisconsin Law 1923, Sec. 102.28, 5- page 40.
4. Wisconsin Law 1923, Sec. 102.08, 6- page 40.

not less than one year. No such contract shall be cancelled or revoked within the policy period until a notice in writing shall be given to the Industrial Commission, fixing date on which it is proposed to cancel or revoke such contract, such notice to be served personally or by registered mail on the Industrial Commission at its office in the state capitol. No such cancellation or revocation shall be effective as against the claim of an injured employee until ten days after the service of such notice, unless the proprietor has obtained other insurance coverage for the protection of such employee, prior to the time of the injury for which claim is made.

1925 Amendments.

Members of partnerships are not counted as employees according to Section 102.05 of the 1925 law and election by employer shall include farm laborers and domestic servants if such intent is clearly shown by the terms of the policy.[1.]

Epileptics and persons who are totally blind may elect not to be subject to the provisions of the Workmen's Compensation Law for injuries resulting because of such epilepsy or blindness and still remain subject to the provisions of such sections for all other injuries.[2.]

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1. Wisconsin Law 1925, Sec. 102.05 parts 2 and 3, page 5.
2. Wisconsin Law 1925, Sec. 102.05 part 5, page 9.

Except in the case of epileptics and blindness any non-election by an employee which was procured by his employer as a condition of employment or by solicitation, coercion or fraud, shall be void and shall not affect the right of such employee or his dependents to the benefits provided by the law.[1.]

Concerning the panel of doctors which an employee must furnish, "Every employer must post a list of names and addresses of the physicians of his panel so as to afford his employees reasonable notice thereof.

Whenever in the opinion of the Industrial Commission a panel physician has not impartially estimated the degree of permanent disability or the extent of temporary disability of any injured employee, the Commission may select a physician to examine the employee and acting on his report in case the estimate of the panel physician has been impartial to the employee, may charge the cost of such examination to the employer if he is a self-insurer or to the insurance company carrying the risk.[2.]

In case of injury resulting in death, where there are no persons wholly dependent, the employer or insurer must pay a certain amount into the state treasury and by amendment of 1925 this payment into the state

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1. Wisconsin Law 1925, Sec. 102.08 part 6, page 9.
2. Wisconsin Law 1925, Sec. 102.09 (f) page 11.

treasury, shall be made in all caseses regardless of whether the dependents or personal representatives of the deceased employee commence action against a third party as provided in Section 102.29,[1].

The payment of $150 into the state treasury in each case of loss or total impairment of a hand, arm, foot, leg or eye, by the employer shall be made in all such cases regardless of whether the employee, his dependents or personal representatives commence action against a third party as in Section 102.29.[2]

Increased compensation is made for minors illegally employed. If working without a written permit a minor is to receive double the amount recoverable unless he is working without a permit at employment, for whidh the Industrial Commission has decided that permits shall not be issued. In this case he receives treble the amount otherwise recoverable. He receives treble also if working at prohibited employment.[3]

In case excess payment has been made into the state treasury in either of the two cases previously mentioned, 102.09-4f and 6d, either because of mistake or otherwise, the state treasurer shall within five days after receipt of certificate from the

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1. Wisconsin Law 1925, Sec. 102.09 4(f) page 15.
2. Wisconsin Law 1925, Sec. 102.09 6(d) page 22.
3. Wisconsin Law 1925, Sec. 102.09 7 (a) (b) (c) page 24.

Industrial Commission, draw an order against the fund in the state treasury into which such excess was paid, reimbursing such payor of such excess payment together with interest actually earned thereon.[1.]

In such case in which the employer is compelled to make payment into the state treasury, if the injury or death was due to the act, neglect or default of a third party, the employer or insurer shall have a right of action against such third party for reimbursement for any sum so paid into the state treasury, which right may be enforced as provided in this law or by independent action.[2.]

1927 Amendments.

When any fireman is responding to a call for assistance outside the limits of the city or village by which the fireman is employed, unless such calls are made in violation of an ordinance resolution or order of such city or village,[3.] he is considered as an employee and, therefore, entitled to compensation. This extends benefits to members of volunteer fire departments the same as to those in paid departments.

If death results to an injured employee other than as a proximate result of the accident, the death

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1. Wisconsin Law 1925, Sec. 102.09-9, page 24.
2. Wisconsin Law 1925, Sec. 102.29-3, page 44.
3. Wisconsin Law 1927, Sec. 102.03-2(a) page 3.

benefit is as follows: Where the accident causes permanent partial disability, the unaccrued compensation shall first be applied toward funeral expenses, not to exceed $200, any remaining sum to be paid to dependents as provided in this law and there shall be no liability for any other payments. The question of dependency shall be determined in accordance with the facts, as the facts may be at the time of the accident to the employee. All computations under this paragraph shall take into consideration the present value of future payments.[1.]

A few changes are made in the major, permanent, partial injury schedule. Part thirteen says the total impairment of one eye for industrial use shall receive twenty-five per cent compensation; part sixteen states that if an accident causes more than one permanent injury specified in this paragraph, the disability allowance for the lesser injury shall be increased by twenty-per cent, except in case of injuries to both eyes when the disability allowance shall be trebled.[2.]

In case of second injury, special indemnity is given as "an amount sufficient to complete the payment of such indemnity as would have accrued if the injury to both members or organs had been caused by a single accident.[3.]

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1. Wisconsin Law 1927, Sec. 102.09, 4(b) page 14.
2. Wisconsin Law 1927, Sec. 102.09, 5(a) page 17.
3. Wisconsin Law 1927, Sec. 102.09, 6(a) page 23.

For minors if the amount recoverable under the paragraphs of the law as it stands shall be less than the actual loss of wage sustained by the minor employee, then liability shall exist for such loss of wage.[1.]

In submission of disputes, each compromise of any claim for compensation under the Workmen's Compensation Law shall be subject to be reviewed and set aside, modified or confirmed by the commission within one year from the date that such compromise is filed with the Commission, or from the date an award has been entered based thereon. The attorney general shall represent the state in all cases involving payment into or payment out of the state treasury under such provisions as are provided. He shall have the power to enter into such compromises reducing the amount of such payments, such compromises to be subject to review by the Industrial Commission.[2.]

The Commission may on its own motion, set aside, modify or change its order, findings, or award at any time within twenty days from the date thereof, if it shall discover any mistake therein or upon the grounds of newly discovered evidence.[3.]

Two or more insurance companies licensed to carry on the business of Workmen's Compensation in this state

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1. Wisconsin Law 1927, Sec. 102.09 7(d) page 25.
2. Wisconsin Law 1927, Sec. 102.16-1 page 34.
3. Wisconsin Law 1927, Sec. 102.18, page 37.

may, with the approval of the commissioner of insurance, form a corporation for the purpose of insuring special risks under the Workmen's Compensation Act, such corporation to have all the power necessary and incident thereto. The articles of incorporation of any such corporation shall contain a declaration that the various company members shall contribute such amounts as may be necessary to meet any deficit of such corporation, such declarations to be in lieu of all capital, supplies and other requirements for the organization of companies and the transaction of the business of the Workmen's Compensation Insurance in this state. Such a company shall be owned, operated and controlled by its company members, as may be provided in the articles of incorporation.[1.]

These amendments attempt to meet changing conditions, such as difference in wages and prices and to clarify points on which disputes have arisen. As a result the working of the law has been simplified and facilitated.

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1. Wisconsin Law 1927, Sec. 102.51-5, page 49.

COMPARISON OF WORKMEN'S COMPENSATION LAW OF WISCONSIN WITH WORKMEN'S COMPENSATION LAWS OF OTHER STATES.

Only five states, North and South Carolina, Florida, Mississippi and Arkansas, and also the District of Columbia have no compensation law.[1] In Canada all but one of the provinces, Prince Edward Island, have compensation laws. Some of these have exclusive state funds; some have a state fund in competition with other insurance carriers and a few, like Massachusetts and Wisconsin have no state fund. The chief points on which the states differ and on which information is principally sought is with regard to relative costs, security and service of the various types of insurance.

There are two general types of funds, the exclusive and competitive. They vary somewhat among themselves. Ontario, British Columbia, and Washington have the same type in which both compensation and insurance are compulsory. No private insurance or health insurance is permitted. Nevada and Oregon differ somewhat in that compensation is not compulsory, but elective. But if the employers in these states elect compensation, they must insure with the state fund. Neither private companies nor self-insurers are permitted. Ohio and West Virginia permit self-insurers to do business, but private companies are excluded. In the

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1. Standards for Workmen's Compensation Law, published by American Association for Labor Legislation, New York.

exclusive fund states, the funds are administered by Industrial Accident Boards or Commissions as a part of the administration of the Compensation Act.[1]

In the case of competitive funds, in six of nine states studied.the funds are under the supervision and jurisdiction of industrial commissions which administer the funds. In some, Montana for example, the fund is an intergral part of the commission; in other states the fund is practically independent, as it is in California. In states like California, the commission formulates the general policies of the fund and then appoints the manager and grants him practically complete control of the fund. In those like Montana, the commission retains greater administrative control over the fund. Two state funds, Idaho and Michigan, are under the jurisdiction of insurance departments. Pennsylvania's state fund is under a specially created board which appoints the manager and has charge of the fund. During 1919 statistics show that stock companies wrote sixty per cent of the total Workmen's Compensation business in the United States, Mutuals wrote eighteen per cent, and state funds, competitive and exclusive, twenty-two per cent. Premium rates of state funds would be greater than the amount stated because their premium rates are usually lower than those of the stock companies.[2]

1. Comparison of Workmen's Compensation Insurance and Administration, U.S. Bureau of Labor Statistics, Apr. 1922, page 2.
2. Comparison of Workmen's Compensation Insurance and Administration, U.S. Bureau of Labor Statistics, Apr. 1922, page 3.

The amount of business written by competitive state funds varies in different states. Michigan in 1919 was four per cent and Montana in the same year was forty-nine per cent. The average for all the competitive state funds was thirteen and two-tenths per cent. Several state funds have considerably increased their premium income since their establishment. One reason some of them write very little is that they have not sufficient employees to go out and get business.

Variations within each type of insurance makes it practically impossible to compare state funds with stock companies as a whole or mutual companies or self-insurers as a whole. However, taking the best of each type, the records show that the state funds do business twenty-five to thirty per cent cheaper than stock companies. State funds are financially sound and have adequate reserves and surplus. They pay compensation as promptly as private carriers or self-insurers and they are more liberal in settling claims and appeal fewer cases to the commissions or courts. Compared with private companies, the state funds perform but little safety and inspection work.[1.]

In some exclusive fund states, especially in Washington and in the Canadian provinces, the state assumes the responsibility for compensation payments in case of accident. It obtains its premium later, or in advance, and the workman

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1. Comparison of Workmen's Compensation Insurance and Administration, U.S. Bureau of Labor Statistics, Apr. 1922, page 4.

does not suffer because the employer has not paid his premium.

Wisconsin, like Illinois, Indiana, Massachusetts and some other states has no state fund. In Wisconsin the Workmen's Compensation Law is administered by the Industrial Commission of three members.[1] An employer may insure in a mutual or other insurance company. The Industrial Commission may examine from time to time the books and records of any liability insurance company, insuring liability or compensation for any employer of the state and may revoke the license of any company that refuses or fails to allow such examination.

A glance at statistics shows a vast difference in the cost of administrative expenses in the exclusive fund and competitive states.

Exclusive Fund		Competitive Fund	
Ontario----	$16,800	California--	$2,582,000
Ohio-------	279,000	Pennsylvania-	4,902,000

Private Insurance

Illinois----- $2,876,000

Ohio has a total of employees required to administer the fund of two hundred and fourteen, California has three hundred and four, while Illinois with private insurance has fifty-seven. This last is due to the fact that much of the business is done by the regular employees of the insurance companies.[2]

1. Workmen's Compensation Act. of Wisconsin 1927,Sec.102.14 p.22
2. Comparison of Workmen's Compensation Insurance and Administration, U.S. Bureau of Labor Statistics, Apr.1922,tables page 7.

With regard to compensation cost to workmen, Oregon is the only state where the workman is required to pay a portion of the compensation. There the workman must pay one cent per day which equals nine or ten per cent of the total compensation costs. In many of the western states the employer works under a contract hospital system, whereby he is able to place a large part of the hospital cost on the workman. The workman is charged a certain sum, one dollar a month or more, deducted from his wages and turned over to the hospital. This frequently pays the entire cost of medical service at the hospital. Thus the employer is relieved of a part of the burden and it falls upon the workman.

In computing costs to employers there are many complicating factors, in comparing insurance rates and expense ratios. In comparing insurance rates, there is often a difference in benefits, identical industries may vary as to hazard in different states; manual rates are not actually charged because of merit rating; a state would need to keep very strict supervision over rates to know that the insurance company is actually doing business at those rates, and state funds and other insurance carriers differ as to dividends and reserves.

With regard to expense ratios, the pure premium factor is the same for all carriers for rate making purposes per one hundred dollars of pay roll, but the expense for putting

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1. Comparison of Workmen's Compensation Insurance and Administration, U.S. Bureau of Labor Statistics, Apr. 1922, p. 9.

benefits into effect varies with the type of insurance and reflects the difference in cost of insurance administration.

The second factor of importance next to cost is service. This, too, is difficult to measure. There are three tests; promptness of payment, adequacy or liberality of payments and accident prevention.

Promptness of payment might be affected by the length of waiting period, but it has been proved from accidents in several states that the waiting period is an almost negligible factor. Wisconsin has a waiting period of one week and none if the disability continues more than three weeks. Massachussets has one week and none if disability continues more than six weeks. California has one week. Oregon has no waiting period. Lumber mills or industries remote from centers might have longer waiting periods. Promptness of payment might also be affected by the frequency of wage payments. In the West wages are commonly paid monthly, in the middle West bi-weekly, and in the East weekly. Size of states, compactness of population and ease of communication would also have some effect. There is difficulty also if the industries are in out of the way places.

Comparison shows that as regards promptness of payment the records of each type of insurance carrier vary widely.[1] Self-insurers, whom one would naturally expect

1. Comparison of Workmen's Compensation Laws and Administration, U. S. Bureau of Labor Statistics, Apr. 1922 page 11

to pay promptly are just as slow in paying compensation as the casualty companies or state funds.

Of six exclusive state funds, Oregon, Nevada and British Columbia have a better record as regards promptness of payment than the average private insurance company. In the other three exclusive fund states, Ohio, Washington and West Virginia, the reverse is true.

In most of the competitive fund states, payments are made and claims handled more promptly by the state fund than by other insurance carriers. The two competitive funds having the poorest records are under the supervision of insurance departments and not under the jurisdiction of compensation commissions.

Of the competitive funds, California; of the exclusive state funds, Oregon; and of those with no state funds, Massachusetts first with Wisconsin second, rank highest. Massachusetts has a Liberty Mutual Company. Oregon in spite of a large area and lumbering industries has a better record than California, and almost as good a record as Massachusetts. Long delay is usually due to delay in reporting, either on the part of employers or physicians or of workmen. Commissions, too, sometimes have inadequate follow-up methods.

In adequacy or liberality of payments, the state funds are usually liberal in their awards to claimants. With private insurance carriers, mutual companies and stock companies there are many cases of underpayment of compensation claims. In the case of self-insured employers and stock companies in particular, one hundred and fourteen out of every one thousand show advantage taken of technicalities and payment avoided on the flimsiest of excuses.[1.]

In the department of accident prevention, both industrial commissions, like in Wisconsin, and state funds are weak. Most of the compensation commissions are not authorized by law to do safety work. In some of the exclusive state funds, the industrial commissions have undertaken comprehensive safety campaigns. In most of the compensation states, accident prevention, such as it is, is done by state departments, usually the factory inspection department.

On the other hand, many of the private insurance companies have well-organized safety departments and are doing excellent work along safety lines. It is difficult to measure the effectiveness of safety work because there are few reliable statistical data, showing reduction in accident severity rates. Frequently inspection work is

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1. Comparison of Workmen's Compensation Laws and Administration, U.S. Bureau of Labor Statistics, Apr,1922,p.13.

done for competitive purposes to get or keep business, irrespective of whether or not it results in actual reduction of accidents.

Workmen's Compensation Laws are administered usually by Industrial Accident Commissions or Boards composed usually of three to five members-- Wisconsin has three-- and a staff of employees. A few of the laws are administered by a single member, New York is an example, while in Massachusetts the board consists of six members. In California, Michigan and Washington the commissioners have been combined with other labor law-enforcing agencies.

The actual duties and work performed by the commissioners vary greatly in the several states. In some states, particularly Massachusetts and Pennsylvania, commissioners devote practically all their time to the hearing of cases. In practice they exercise quasi judicial rather than administrative functions. In most of the states with exclusive state funds, formal hearings are the exception rather than the rule. In California the commission allocates the work among several members, thus one has charge of accident prevention work, another has supervision over compensation matters. In Wisconsin one commissioner has charge of financial matters, one of rehabilitation and one of safety. This plan is followed also in Oregon, British Columbia, New York and Utah.[1.]

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1. Comparison of Workmen's Compensation Laws and Administration, U. S. Bureau of Labor Statistics, Apr. 1922, p. 21

In ten states, Colorado, Illinois, Idaho, Maryland, Massachusetts, Michigan, Nevada, Ontario, Washington and West Virginia commissions are limited to administration of the compensation law proper. Of these Illinois also administers the conciliation and arbitration act, while Colorado administers the minimum wage law, and is also charged with the enforcement of the safety act, but this latter function is exercised by the Bureau of Labor Statistics.

Four compensation commissions, British Columbia, California, Montana and Oregon administer the safety laws as well as the compensation act. Six commissions, Indiana, New York, Ohio, Pennsylvania, Utah and Wisconsin administer the entire body of labor laws. Pennsylvania has two agencies concerned with the administration of the Workmen's Compensation Act, one the Workmen's Compensation Board composed of three members, is a judicial body which decides disputed cases arising under the act. The other agency is the Department of Labor which administers all the labor laws. This department also administers the compensation act except in the case of disputed cases involving formal hearings which go to the Workmen's Compensation Board for adjudication.

In the exclusive fund states the functions of the commission include the administration of the insurance

provisions, i.e. the formulation of insurance rates, collection of premiums, payment of claims, etc.

In six of the nine states with competitive insurance funds, the commission also has supervision over the fund. The immediate administration is entrusted to a manager appointed by the commission. The amount of power and authority exercised by these state fund managers varies in different states. On the whole, funds under the jurisdiction and supervision of compensation commissions have been found to be better administered than those administered by insurance departments. As a rule, those commissions which have relatively the most employees and show the largest administrative expenses also perform the best service, proving that an efficient administration requires an adequate administrative force.[1.]

Accident reports are required from all employers, irrespective of whether they are under the compensation act in all but two of the twenty states examined. These two are Illinois and Nevada. Few commissions tabulate all the accidents reported. Oregon and Wisconsin exclude from their tabulations all non-compensable accidents. California and Massachusetts are practically the only states which have tabulated all industrial accidents.

Wisconsin and Illinois require reports of compensable accidents;only Pennsylvania requires reporting of accidents of two days disability or over. The other

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1. Comparison of Workmen's Compensation Laws and Administration, U.S. Bureau of Labor Statistics, Apr.1922,p.23.

states require all disability accidents or those requiring medical attendance to be reported. If the disability period is less than one week, the waiting period for the two states, Illinois and Wisconsin, is done away with and the accident need not be reported.

It is advantageous to have all accidents reported in order to compute increased cost from the reduction of the waiting period or to compute accurate accident frequency and severity rates. A very large clerical force would be necessary to do this.[1.]

As to time of reporting, in Ohio the first report of the accident need not be transmitted to the commission until the end of two weeks. The thoroughness of the commission's follow-up methods seems to be the determing factor in securing promptness in accident reporting. Massachusetts is best in this respect. In Massachusetts, Michigan, Utah and Wisconsin, the employer himself transmits the report direct to the commission. In other states it reaches the commission via insurance companies.

Physicians'reports are not commonly required. In Ohio the physician's report must be signed by the injured workman. In New York physicians' reports are not essential, since the commission holds hearings in every case and claimants are examined by commissioner's medical advisers. Pennsylvania and Colorado require physicians'

1. Comparison of Workmen's Compensation Laws and Administration, U.S. Bureau of Labor Statistics, Apr.1922,p.28.

reports, but the files showed that such reports were not regularly received. The Wisconsin commission requires physicians' reports only in case of permanent disability or temporary disability lasting over three weeks.

There are three ways in which the merits of a workman's claim may be decided upon. While the decision merely taken upon reports of an employer or an insurance carrier may be unfair to the workman, yet the postponement until claim could be filed by the workman would mean delay of compensation payment and the employer's help is very often solicited by the worker in making out his claim. Another method is by voluntary agreements or direct settlements. This agreement of settlement between workman and employer is not valid until approved by the commission and is usually reviewable in case of error, fraud or changed conditions.

In the hearing system of New York, the commission sees the worker, knows the exact nature of the injury and the extent of the disability. Thus the possibility of underpayment is greatly reduced. The disadvantage of this is the long delay and the expense attached to attending the hearing.[1.]

The third system allows the decision to be based merely upon reports of the employer. This is the best

1. Comparison of Workmen's Compensation Laws and Administration, U.S. Bureau of Labor Statistics, Apr. 1922, p. 49.

with respect to simplicity. There is no delay. The disadvantage is that there is no check on the accuracy of the reports. This is avoided by the commissions of Massachussetts and Wisconsin by requiring the first report of the accident to be made by the employer while agreements, supplemental reports and receipts are made by the insurance carrier. This makes possible a comparison by means of which inconsistencies and inaccuracies may be discovered and corrected. Some states require the workman to file a claim. California, Illinois, Montana, Utah and Wisconsin receive reports only from employers and insurance carriers.

Tabulation of accident reports is done in different ways. In Wisconsin accident reports are first filed in alphabetical order by name of employer. Each employer's accidents are numbered consecutively and filed in numerical order under the employer's name. Then there is the consecutive numerical system where all accidents are numbered in one consecutive series. This scatters the accidents of each employer. Third is the system used in West Virginia where all accidents of given date form the unit. This, too, has the disadvantage of scattering the accidents of each employer.[1].

In some compensation acts, basic rates are enumerated in the act. In some states, Montana and Washington, monthly or quarterly assessments are levied just sufficient to

1. Comparison of Workmen's Compensation Laws and Administration, U.S. Bureau of Labor Statistics, Apr.1922,p. 45.

meet the losses as they occur. This fund, if temporarily insolvent receives aid from other classes. In other states, rates are intended to reflect hazard of classification in the long run. In all of the competitive state funds except California, rates charged are lower than those charged by private stock companies. In California the rates are the same.

All of the state funds, both exclusive and competitive, with the exception of Montana, have put into effect some form of merit rating. Most compensation laws set aside ten per cent of annual premium as a catastrophe reserve. The general effect of merit rating has been to reduce the basic rates.

COMPARISON OF WORKMEN'S COMPENSATION LAW OF WISCONSIN WITH WORKMEN'S COMPENSATION LAWS OF FOREIGN COUNTRIES

The principle of systematic compensation for losses, due in cases of industrial accident has been practised in Europe much longer than in America. Mining industries, especially in Germany and Austria, were first to be operated with large numbers of employees and here we find the earliest examples of such compensation. Navigation developed comparatively well defined systems of relief for disability arising from operation of vessels and with the development of railway transportation, we have in Germany the earliest records of provision for railway employees.[1] With the coming of the factory system definite Workmen's Compensation Laws were passed in Germany in 1884, in Austria- 1887, in Norway- 1894, in Finland- 1895, and in Great Britain- 1897.

The industries covered by these compensation laws are, as a rule, manufacturing, mining, quarrying, transportation, building and engineering, and in some countries agriculture, forestry and navigation. In Venezuela only mining is covered and in Greece only mining, quarrying and metallurgy. In Belgium, Great Britain, and Victoria, Australia the laws apply to practically all employments. In Austria, Belgium, Denmark, Finland, Germany, Italy, Norway, Spain and Sweden persons subject to

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1. Bureau of Labor Statistics, Workmen's Compensation Laws of the United States and Foreign Countries, V.203, p. 297.

compensation within the industries covered are wage earners only and, in some cases, those exposed to the same risks such as overseers and technical experts. In France, Great Britain and the British colonies, Hungary and Russia the laws apply to salaried employers and workmen equally, though overseers and technical experts earning more than a prescribed amount are excluded in some countries. Italy, for instance, excludes those who earn more than $1.35 per day and Ontario excludes those who earn more than $2000. per year. Employees of state, provincial and local administrations usually come within the provisions of these acts.

In Wisconsin all employments except farm labor are compensated and there is not the restriction as to official and employee since any one working "subject to direction and control,"[1] is not deemed an official.

The laws of foreign countries in every case fix the compensation to be paid and, with one or two unimportant exceptions, compensation is based on wages received by the injured person and consists of an allowance for temporary disability and annual pensions or lump sum payments for death or permanent disability, to which are added in many countries, expenses of medical and surgical treatment and funeral benefit. This is like the Wisconsin law.

The laws of continental Europe omit any provisions for occupational disease and provide compensation for accidents only. Britain and her colonies provide for compensation for certain diseases the same as for accident. In Russia

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1. Wisconsin Law 1927, Section 102.07, page 7.

we have a partial exception. In the laws applicable to state mines and metallurgical establishments and to employees in government establishments, provisions for disease compensation are generally included. Denmark has a very recent law which provides for industrial diseases and Portugal has a similar law passed in 1913. Great Britain has compensated a limited number of diseases since 1906. Argentina in 1915 provided compensation for diseases due to employment. In Wisconsin the law of Workmen's Compensation is extended to include occupational diseases, growing out of and incidental to the employment.[1.]

The laws of various countries are not equally liberal in providing for compensation in case of minor accidents. Italy, Russia and Spain grant compensation for all injuries involving any loss of working time. In most countries a waiting time is fixed beyond which disability must extend in order to entitle workmen to compensation. These waiting periods vary greatly, from two days in the Netherlands and Switzerland[2.] up to sixty days in Sweden and thirteen weeks in Denmark.

In some countries compensation during the early part of the disability period is paid out of funds established under systems of compulsory sickness insurance. In Austria this period is four weeks, in Germany the fourth to the ninety-first day, in Hungary ten weeks, in Rumania two weeks

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1. Wisconsin Law 1927, Section 102.35, page 51.
2. Bureau of Labor Statistics, 203, Workmen's Compensation Laws of United States and Foreign Countries, page 301

and in Russia thirteen weeks.

In Wisconsin the waiting period is one week with no waiting period at all if the disability continues beyond the twenty-second day.[1] This seems a much less complicated system.

The entire burden of accident compensation rests upon the employer in all but nine countries; these are Austria, Bulgaria, Germany, Greece, Hungary, Luxembourg, Montenegro, Rumania and Russia.[2] In these countries the employees bear a part of the expense. If disputes arise, most of the acts specify the necessary procedure for settlement by special arbitration tribunals or ordinary law courts, with a view to obviate the necessity for instituting legal proceedings.

Both voluntary and compulsory insurance are found. In voluntary insurance we find sometimes private companies or mutual associations competing with a state institution. In Sweden the State Insurance Institute competes with the private or mutual concerns. In France there is the National Accident Insurance fund, which, however, is not permitted to provide against temporary disability. Compulsory insurance is provided for seamen in a special government institution.

The private and mutual companies sometimes have no state competition. Such is the case in Argentina, Colombia, Belgium and Denmark, where insurance is voluntary except that the law requires compulsory insurance of seamen,

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1. Wisconsin Law 1927, Section 102.09 2d, page 13.
2. Bureau of Labor Statistics 203, Workmen's Compensation Laws of the United States and Foreign Countries, page 302.

either in mutual associations or in the insurance companies, and where a state institution exists for voluntary insurance of fishermen and seamen not covered by the compulsory law.

Voluntary insurance also exists in Great Britain and in most of the British colonies and in San Salvador and Spain.

If insurance is compulsory there may be compulsion to insure as in Norway and Switzerland, Austria, Hungary, and Luxembourg, or compulsory insurance with choice of insurance institution as in Italy, Netherlands, Queensland and Cuba. In Norway there is one state insurance bureau for all industries; in Switzerland there is a national accident insurance fund in which all must insure.

Sometimes employers must insure in compulsory mutual associations controlled by the state. These may be organized on territorial lines. Luxembourg has one institution for all industries; Hungary has two institutions, one for Hungary and one for Croatia Slavonia including all industries. This will now be a part of Jugo-Slavia. Austria has seven districts for all industries, also separate institutions for railroads and mining.

Others are organized on lines of industry instead of territory. Such is the case in Germany with sixty-six industrial institutions, each covering the entire country for one group of industries, except that some industries

have several associations, each covering a specified area. In addition there are forty-eight agricultural institutions.[1]

In Greece the law applies to mines, quarries and metallurgical establishments only and has a special miners' fund.

Where insurance is compulsory but with choice of insurance institutions, we have state institutions competing with private companies or mutual associations or the latter without any state competition. Italy has a national Industrial Accident Insurance Institution, except that for navigation and for the Sicilian Sulphur Mines, compulsory mutual associations have been created by special legislation. Netherlands has the Royal Insurance Bank. The employers may insure in private insurance companies or they may be permitted to carry their own insurance, but all compensation is paid by the Royal Insurance Bank which deals with the employer or the insurance company. Victoria and Queensland have a state accident insurance fund.[2]

In Cuba insurance must be in a private company or a mutual association. There is no state insurance competing. Similarly in Finland except that for seamen a special compulsory employers' mutual association, under strict government control has been established by special law.

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1. Bureau of Labor Statistics, 203- Workmen's Compensation Laws in United States and Foreign Countries, page 303.

Wherever there is compulsory insurance, in prescribed institutions controlled by the state, there is of course no question as to the security of payments. Such is the case in Norway where a Government Bureau provides the insurance and in Switzerland where the National Accident Fund is maintained by the Confederation. In Germany, Austria, Hungary, Luxembourg, Netherlands and Russia the law specifically states or implies the guaranty of the solvency of the institutions providing the insurance. In the Netherlands the injured workman is protected by the equivalent of insurance in the Royal Insurance Bank, irrespective of the institution in which the employer carries the insurance; the uninsured employer and the private insurance companies are required to give satisfactory guarantees to the Royal Insurance Bank. In Greece the payments are guaranteed by the National Miners' Fund.[1.]

A second method of state guaranty is by a special national fund, from which the compensation is paid in cases of insolvency either of the employer or of the insurance carrier. The sources of revenue of these funds show considerable differences. In Italy, notwithstanding the system of compulsory insurance, a fund has been organized under the supervision of the Government Bank of Deposits and Loans, supported by fines for non-compliance with requirement to insure, or other fines, and by the compensation, due in fatal cases but not paid, because of

1. Bureau of Labor Statistics 203, Workmen's Compensation Laws of United States and Foreign Countries, page 304.

the absence of survivors. In France the guaranty fund is managed by the National Old Age Retirement Fund and is supported by special taxes upon all employers covered by the act, but this fund guarantees pension payments only while compensation for temporary disability is secured by a preferred claim upon the assets of the employer. In Belgium the guaranty fund is managed by the National Retirement Fund and is supported by a tax levied only on those employers who do not carry insurance.

Where no state guaranty exists, guaranties must be exacted from insurance companies or from the individual employer. Wherever insurance is either voluntary or there is a choice of insurance institutions, the government protects the insured employee by requiring the insurance company to maintain proper reserves or to make guaranty deposits with the government, or by both methods combined.

In case of uninsured employees their interests are usually protected by giving them a preferred claim upon the assets of the employer. In certain countries where there is no compulsory insurance, the employer is not permitted to carry the liability for continuous payment of pensions in cases of death or permanent disability, but must provide for such payments through insurance institutions.[1] In Belgium both reserves and guaranty deposits are exacted and in addition the capitalized value of pensions must be deposited in the National Retirement

1. Bureau of Labor Statistics, Bulletin 203, Workmen's Compensation Law in United States and Foreign Countries p.305.

Fund. There is, therefore, no necessity for giving the injured employee a preferred claim on the assets of the employer. Finland requires the payment of the capitalized value of the pension to an insurance company in cases where no insurance has been taken. The guaranty of the pension payments of the uninsured employer is limited to a preferred claim upon his assets in case of insolvency in the following countries: Denmark, Great Britain, the British Colonies and Sweden. In Spain, both reserves and deposits are required from insurance carriers, but in case of uninsured employers, no special provision is made in case of insolvency.[3]

In Wisconsin, any company in order to carry compensation insurance must have been"approved by the commissioner of insurance, as provided by law,"[1] and its books may be examined at any time by the Industrial Commission of Wisconsin. Refusal to allow this means that the company's license to do business in the state may be revoked.[2] With such protection there have been very few cases in which the workman has lost his compensation through insolvency of the insurance carrier.

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1. Wisconsin Law 1927, Section 102.31-2, page 48.
2. Wisconsin Law 1927, Section 102.31-3, page 49.
3. Bureau of Labor Statistics, Bulletin 203, Workmen's Compensation Law of United States and Foreign Countries, p 305

PRESENT NEEDS IN WORKMEN'S COMPENSATION IN WISCONSIN

The strongest argument for payment of compensation to all injured workmen or to their dependents is that shortened lives and maimed limbs due to industrial injuries are just as much expenses of production, which should be met by those conducting industry for their own profit, as are used-up raw materials or worn out tools and machinery. The whole expense of losses to capital is necessarily borne by the employer. The whole expense of the personal losses due to injuries is the loss in wages sustained and the expenses for medical care during incapacity. The only logical reason for not imposing through the employers, this entire expense on every industry that occasions it, is that injured workers must not be deprived of a motive for returning to work and to independent self-support as soon as they are able to do so. The compensation act, therefore, should provide for the expense of all necessary medical attendance and for the payment of such a proportion of wages to the victim of the injury during his incapacity, or to his dependents if he be killed, as will provide for the resulting needs and yet not encourage malingering.[1.]

All the acts provide for medical attendance. In eighteen states of which three are California, Oregon and West Virginia, such services and supplies are to be furnished as long as needed, subject to the approval of the Accident

1. Standards for Workmen's Compensation Laws, recommended by American Association for Labor Legislation, Jan.1,1928

Board. This is also the case under the federal law for Government employees. In twenty other states, of which Wisconsin is one, and under the federal law the amount of such service and supplies is the sum required for a complete cure, subject to the Board's approval. This seems the more liberal policy of the two. Other states, although arbitrarily limiting either the period or the amount of such services and supplies, permit an appeal to the Board for their extension if the circumstances warrant.

This might cause some inconvenience to the family of the injured employee and even delay and a possible break in the medical attentions, if the appeal were not made soon enough. The method adopted by Wisconsin, "a complete cure" would seem best from the standpoint of the injured employee's welfare.[1.]

The waiting period is usually from three to seven days at the beginning of the disability. A term of at least three days is advisable because the extent of the injury is by that time quite apparent. If the period is longer than seven days, the employee or his family may be in actual need. If within this time the employee returns to work, no compensation is payable. In Oregon and South Dakota there is no waiting period. This seems scarcely fair to the person or company who pays the compensation, but the nature of the industry must also be

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1. Standards for Workmen's Compensation Laws, Jan. 1,1928

taken into consideration. Distances are great in both Oregon and South Dakota and this may make a "no-waiting" period advisable.

In cash benefits for total disability the disabled workman should receive during disability about sixty-six and two-thirds per cent of his wages. If the wages are less than eight dollars a week, he should receive the full amount of his wages. If he is allowed more than two-thirds, there may be a temptation to malinger, yet if the family be large and needy, it would seem that they should be provided for to the extent of living in "reasonable and frugal comfort."[1] A minor should after reaching twenty-one receive sixty-six and two-thirds per cent of the wages of able-bodied men in the occupation group to which he belongs. In Wisconsin a minor gets double and, if injured at a forbidden occupation, treble compensation. All of the acts except those of Washington and Wyoming base disability compensation on a percentage of wages rather than on a flat rate regardless of wages. Wisconsin pays sixty-five per cent of wages and comes very near to the two-thirds class.[2]

For partial disability wages, compensation is proportioned to the degree of physical disability, taking into account age and occupation, and is subject to readjustment only on account of changes in extent of disability. In case

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1. Pope Leo's Encyclical on Labor.
2. Standards for Workmen's Compensation Laws, Jan. 1, 1928.

of second injury. Wisconsin and some of the other states pay out of a special fund any compensation in excess of that for which the second injury by itself would make the employer liable.

With regard to death compensation Wisconsin, like New York, Michigan and some others, exceeds in the amount paid for funeral expenses the amount, one hundred and fifty dollars, advocated by the American Association for Labor Legislation. Yet the two hundred dollars paid by Wisconsin and the other states mentioned does not seem an overpayment.

Enough must be paid the dependent widow or widower to maintain the children, if there are some. Thirty-five per cent for widow or widower and twenty-five per cent for one child under eighteen and fifteen per cent for each additional child is recommended.[1] Wisconsin gives a lump sum equal to four times the annual earnings, and for a child under one year a sum equal to the average annual earnings of the employee. For children of each successive yearly age group the amount allowed is reduced by one-fifteenth part and a child over fifteen receives no compensation unless he is physically or mentally incapacitated. This part of the Wisconsin law could be improved. A child at fifteen is normally half or less than half way through high school. The compensation should continue until at least the age of eighteen, otherwise a child may not be

1. Standards for Workmen's Compensation Laws, Jan. 1, 1928.

able to complete his or her high school education.

With regard to the lump sum payment to widows also, improvement might be made. A smaller steady installment payment until death or remarriage would more adequately care for her needs. A lump sum, even if paid in installments, comes to an end and may end at a time when the beneficiary, because of age or infirmity has particular need of it. Therefore, a steady payment would be better.

If other persons than children are dependent, compensation of twenty-five per cent for the first and fifteen per cent for each additional person proportionately shared would seem sufficient. The total percentage payable added to other percentages payable to widow, widower or child must not exceed a total of sixty-six and two-thirds per cent and should be paid only during dependency. In Wisconsin the commission decides how much shall be paid such dependents, but in no case may it exceed twice the average annual earnings of the deceased.

Alien dependents should be placed on the same footing as other dependents. There is no reason why the family of an alien should be excluded, if he is injured at work in one of the United States. The burden would be especially hard for the family to know that the breadwinner might be suffering from lack of care while they were in a far country and the family of the foreign laborer is

often in need of assistqnce. Only four states, Alabama, Hawaii, New Mexico and South Dakota expressly exclude aliens from compensation. In most of the other states, including Wisconsin, they are expressly included and in the few remaining they are apparently included, since no mention is made of them.

If the Accident Board or Industrial Commission decides that the interest of the parties would be best served by lump sum payments, compensation should be paid in this way as it is done in Wisconsin. Ordinarily it is best paid in installments, as a lump sum may soon be squandered and the dependents are again in need. In case of the lump sum, the present value of future payments are computed and paid.[1.]

Farm labor and domestic service are excluded in nearly all the states, usually by their own wish, yet there is little reason why they could not profit by having compensation. On most farms and in most homes the number of employees would not exceed three and, therefore, they would not come under the law. Casual labor should be excepted since employers of such labor cannot fairly be required to carry compensation insurance policies.

All personal injuries received in the course of employment, and death resulting therefrom within six years should be allowed compensation, unless occasioned by the

1. Standards for Workmen's Compensation Laws, Jan. 1, 1928

wilful intention of the employee. The act should also embrace occupational diseases which, when contracted in the course of employment, should be considered personal injuries for which compensation is payable. Wisconsin has no limitation as to time in which death must occur in order to form a basis for compensation. Such a limitation seems scarcely necessary as undoubtedly most of the cases of death resulting from injury would occur within the six year period. Occupational diseases are included as personal injuries in the law of Wisconsin.[1.]

To avoid the frittering away of vast sums in law suits, the compensation provided by the act should be the exclusive remedy. Suits for damages are not permitted under any circumstances in Wisconsin and in several other states. If the employer has been guilty of personal negligence, even going to the point of violating a safety statute, his punishment should be through a special action prosecuted by the state factory inspection bureau. Likewise if he has failed to insure, he should be penalized by being made subject to a penal action prosecuted by the accident board and by increasing his liability for compensation.

The strongest incentive towards results in the prevention of accidents comes from imposing the whole expense of compensation on the employer. The irregularity and uncertainty of accidents makes this policy inexpedient for small employers with limited financial resources. Security can be obtained through some system of insurance. Employers

1. Standards for Workmen's Compensation Laws, Jan. 1, 1928.

should, therefore, be required to insure their compensation liability. In Wisconsin insurance in a Mutual Association is permitted or maintenance of their own insurance fund, with the approval of the Industrial Commission. Or third, the employer may insure with an insurance company which carries compensation insurance.

Accident boards in order to devote their entire time to accident work should be appointed by the governor with the consent of the Senate. This is done in all but nine of the states, but not all of them devote their entire time to the work. The accident board's disposition of a case should be final and conclusive unless appeal therefrom is taken within a specified time. Appeals should be allowed only on questions of law and should be carried direct to the highest court.[1.]

Restored earning power is of more importance than distress relieved. The administrative board should, therefore, be authorized to encourage, cooperate with or conduct enterprises for the re-education and rehabilitation of injured persons. Forty states, including Wisconsin, already make provision for aiding industrial cripples to secure retraining, re-education or re-employment.

On the whole, the Workmen's Compensation law of Wisconsin seems to measure up well to the standards set by the American Association for Labor Legislation. Her law, if properly enforced is one of the most enlightened and

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1. Standards for Workmen's Compensation Laws, Jan. 1,1928 Other Remedies than those provided by the Compensation Act.

most progressive of the state laws. In a few points there is room for improvement as indicated above, but taken altogether her law seems one of the most just and reasonable and one which will make for social progress.

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