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BULLETIN

ON WORKERS' COMP ISSUES

League staff will monitor the workers' compensation discussion through the legislative session. This special series will examine specific elements of the Select Committee's report on Workers' Compensation and other developments relative to the issue as they arise. No position by the League is intended or implied. -- Gary E. Wood, President

Workers' Comp Series No. 2

January 26, 1989

THE OCCUPATIONAL HEALTH AND SAFETY ISSUE

The nexus between workplace safety and medical claims, lost time, and insurance costs is strong indeed. It is a truism to suggest that in a safer workplace, fewer injuries will occur, and fewer injuries can lead to fewer claims and lower costs.

The beautiful simplicity of such a generalization applies, however, only to the workplace as an abstract whole. As many Texas policyholders can testify, a safe working environment with few or no claims does not necessarily result in lower workers' comp costs. This situation then raises a basic question: Does a safe working environment exist in Texas?

The table on the following page presents traumatic job related death data and population figures for the major industrial states. As a cursory examination will reveal Texas ranks very high in all categories.

Texas, the third most populous state in the nation, ranks first among all states in average job related deaths per year for the period 1980-1985. Only California, with a population 62 percent greater than Texas, comes close in absolute numbers. The other industrial states do not even approach Texas in absolute numbers, and with a couple of exceptions, the other states' fatality rankings closely parallel their population ranking.

Ranked by deaths per 100,000 workers, Texas is in the first quartile of all states while the remaining eleven major industrial states are in the third (4) and fourth (7) quartiles. Moreover, as the Select Committee points out, "The majority of states whose fatality rates exceed that of Texas have economies that are primarily based in agriculture and forestry, or in mining, oil, and gas."

These data are general and are not segregated by industry, and as a consequence, no firm conclusions about the relative safety of the workplace in Texas can be reached. However, the number of deaths and Texas' high rankings are suggestive that the Texas workplace may not be very safe.

A lack of significant data is another problem symptomatic of the Texas workers' comp system. Findings of the Select Committee indicate that the need for timely and meaningful data relative to workplace safety has been acknowledged for more than 50 years.

Indeed, two of the basic threads interwoven within the Select Committee's final report are the effective monitoring of workplace safety and the prompt collection and utilization of essential data.

**TWELVE MAJOR INDUSTRIAL STATES
NUMBERS AND RANK AMONG THE 50 STATES IN SPECIFIED CATEGORIES**

	POPULATION (900)		AVERAGE ANNUAL FATALITIES*		FATALITIES PER 100,000 WORKERS**	
California	26,981	1	739	2	7.1	32
New York	17,772	2	179	10	2.7	48
TEXAS	16,682	3	781	1	13.2	12
Pennsylvania	11,889	4	278	5	6.6	37
Illinois	11,553	6	309	4	7.1	32
Ohio	10,752	7	200	8	5.2	43
Michigan	9,145	8	167	12	5.5	42
New Jersey	7,620	9	105	21	3.7	46
North Carolina	6,331	10	194	9	7.9	29
Massachusetts	5,832	12	62	34	2.4	49
Indiana	5,504	14	160	13	8.2	27
Wisconsin	4,785	17	116	18	6.5	38

*Calculations include all fatalities, private and public.

**Calculations for private sector only.

SOURCE: Joint Select Committee on Workers' Compensation Insurance, *Research Papers of the Joint Select Committee on Workers' Compensation Insurance*, Chapter 7 "Occupational Safety and Health in Texas," pp. 8-9.

SELECT COMMITTEE PROPOSALS

The Select Committee recognizes the need for a safe workplace and the need to promote safety systemwide. Currently, the safety program, as such exists, is highly disjointed with various aspects administered under the aegis of the State Board of Insurance (SBI), the Industrial Accident Board (IAB), the Texas Department of Health (TDH), the Occupational Health and Safety Administration (OSHA), and the Bureau of Labor Statistics (BLS). The safety program as presently constituted is hydra-headed, ill-designed, and decentralized.

The Select Committee proposes to strengthen and to expand the IAB (or a successor agency). The expansion would include a Division of Occupational Health and Safety. (See Recommendation I, 8.) The proposed division would have many responsibilities including the following:

- * Initiate and sustain a safety information system;
- * Monitor insurance companies' safety programs;
- * Conduct health and safety programs;
- * Assume OSHA functions currently performed by the TDH; and
- * Coordinate data collection and work with the BLS.

In short, the Select Committee proposes to centralize many of the discrete data collection and program monitoring activities within one agency in an effort to coordinate the safety program.

In addition, the Select Committee recommends the establishment of a "semi-autonomous workers' compensation research institute to conduct professional studies relating to the delivery of benefits, litigation and controversy, insurance costs, rehabilitation and reemployment, **workplace safety**, medical quality and cost, and other matters pertinent to the effectiveness of the system." (Recommendation I, 11.) During the course of its study, the Select

Committee became aware of the lack of general and Texas specific data and studies, and the institute could be a step toward correcting those deficiencies.

The Select Committee also proposes that the IAB or its successor inaugurate, maintain, and support a job safety information system. (See Recommendation IV, 1.) The recommendation suggests that the system's data base be similar to that recommended by committee consultants. (See Martin Urling Co., *Occupational Safety and Health in Texas Workplaces, Vol. 1, Job Safety Information System*, September 1, 1988, 89 pp. plus appendices.) Additionally, the workers' comp agency would be required to use the system to issue reports to improve job safety on a regular basis.

The Select Committee also would have the IAB develop guidelines to identify those employers who exceed criteria established for a specified number of claims and losses within a designated time period. (See Recommendation IV, 2.) The agency would have to develop a compliance schedule and provide penalties for noncompliance. In essence, this recommendation would require employers with claims and losses above an accepted norm to undergo safety consultations in an attempt to enhance workplace safety.

The Select Committee also recommends that the legislature appropriate funds to the IAB to direct and to focus safety education programs and strategies. (See Recommendation IV, 4.) Besides providing the agency with funds, the committee report calls for agency-administered grants to qualified private and public groups for education programs directed at specific problem areas. A levy on premiums is proposed as a method of raising the necessary revenue.

The Select Committee proposes that all current state administered occupational safety programs be centralized in the IAB or successor agency. (See Recommendation IV, 5.) The proposal includes all TDH occupational safety programs plus the SBI's supervision of insurance companies' loss control plans and the attorney general's safety policies for state agencies.

Finally, the committee report would expand insurance carriers' safety consultation programs. (See Recommendation IV, 3.) Basically, the recommendation would require insurance companies to provide more loss control services to small- and medium-sized policyholders. The services could be performed in conjunction with other organizations such as trade associations, unions, etc.; however, the safety programs would have to be approved in advance by the IAB.

WORKPLACE SAFETY

Workplace safety is important for several reasons. First, an unsafe workplace can result in more claims and higher medical costs, which in turn can lead to increased costs for the insurance company. As insurance costs mount, pressure is brought to bear on the rating agency -- in Texas, the SBI -- to boost the rates that insurance companies can charge their policyholders.

If the SBI decides that the carriers are sustaining serious losses, it can increase the manual rate which is the basic rate charged to **all policyholders**. This, then, is how a company with a safe workplace and few claims can experience a rate increase. Although some policyholders, because of past experience (i.e., a good safety record), may receive premium discounts, the net effect is still a rate increase. Consequently, the repercussions of an unsafe workplace affect every policyholder.

Second and foremost, an unsafe workplace can cause death and human suffering, and everyone affected by the workers' comp system, for those two reasons alone, should endeavor

to make the working environment safe. By whatever measure, Texas' ranking for on-the-job deaths is a **disgrace**, and every possible effort should be made to reduce it.

Finally, a safe workplace is good business and makes good sense. A successful safety program can lead to lower workers' comp costs. Not only that, a safe workplace can lead to reduced expenditures in other areas. For example, less will be spent in training replacements, and less time and energy will be expended in investigating accidents.

Additionally, a safe working environment makes for sound employee and public relations. Likewise, the safer the workplace, the less there will have to be consumed on the cleaning and repairing of damaged equipment. Lastly, an excellent safety record can reduce the possibility of lawsuits. In short, there are both economic and humane reasons for establishing a solid safety program.

CLOSING REMARKS

The findings and recommendations of the Select Committee indicate that both private and public workplace safety programs in Texas leave much to be desired. Although safety is not the only variable affecting the escalating workers' comp rates, it is of central importance. Moreover, workplace safety should be a primary concern of employer, employee, insurance company, etc. regardless of whether comp costs are increasing or decreasing. In sum, the Select Committee has found safety -- or perhaps more correctly, the lack of effective safety programs -- to be a significantly weak link in the workers' compensation system.