The Changing Face of Illinois Workmen's Compensation: In Search of a Workable Response to Federal Guidelines

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At the turn of the twentieth century, along with the prosperity brought by the Industrial Revolution came the toll of industrial accidents. In almost every state, the injured worker's only recourse following an accident was through the courts. Even then, his chances of recovery were slight because of the common law defenses available to the employer. These defenses—contributory negligence, assumption of risk and the fellow-servant rule—later proved to be legal fictions inapplicable to modern employment conditions. However, prior to workmen's compensation legislation, less than fifteen percent of the injured employees recovered damages through common law tort liability.

Because of his disability and inability to obtain a judgment from the courts, the individual was unable to sustain himself and those dependent upon him. By immunizing the employer from tort liability, charitable organizations or state agencies were forced to bear the burden of these individuals' accidents. Recognition of these inequities aroused sufficient public sentiment and eventually led to legislative reform. The result was a movement in the states to enact various forms of workmen's compensation legislation. The purpose of this legislation was to supplant the common law rules of master-servant liability by which an employee injured in the course of his employment bore a disproportionate share of the cost of the accident.

Workmen's compensation legislation sought to provide adequate benefits to the injured workmen while strictly limiting employer liability under the act. The compensation acts represented a compromise by which injured employees and potentially negligent employers each surrendered certain common law rights.

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2. Eason, supra note 1, at 145-46; The Report, supra note 1, at 34.
4. Eason, supra note 1, at 145-47.
relinquished the immunity he would otherwise be entitled to in cases where he was not at fault; the employee surrendered his common law right to full damages and accepted a more modest, but certain recovery.\textsuperscript{10} Compensation under the acts was based solely on the loss of earning power in relation to the average weekly wage of the injured employees and the character and duration of the disability.\textsuperscript{11} Thus, the cost of work-related injuries was to be allocated to the employer and accepted as a cost of doing business.\textsuperscript{12} This scheme offered the most equitable balance for the competing demands of management and employees. Much has occurred since these early efforts and this article will attempt to analyze the legislative reactions and practical effects in Illinois.

\textbf{HISTORICAL DEVELOPMENT}

The workmen's compensation movement originated with the adoption of the German Compensation Act of 1884.\textsuperscript{13} Great Britain followed in 1897, adopting a workmen's compensation act that placed the responsibility for compensation exclusively on the shoulders of the employers.\textsuperscript{14} By 1908, most of continental Europe had enacted similar legislation.\textsuperscript{15}

After the turn of the century, Maryland and Montana also adopted the compensation principle. However, these state courts declared the statutes unconstitutional on equal protection grounds.\textsuperscript{16} In 1910, New York developed a compensation act that provided compulsory coverage to employees in certain hazardous jobs. Employers had the option to elect the same coverage for all other occupations. The question of this statute's constitutional validity reached the Supreme Court in \textit{New York Central Railroad Co. v. White}.\textsuperscript{17} After examining the rationale behind the enactment of

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  \item [\textsuperscript{10}] New York Central Railroad Co. \textit{v. White}, 243 U.S. 188, 202 (1917).
  \item [\textsuperscript{11}] Id. at 204.
  \item [\textsuperscript{12}] O'Brien v. Rautenbush, 10 Ill. 2d 167, 139 N.E.2d 222 (1956); Mier v. Staley, 28 Ill. App. 3d 373, 329 N.E.2d 1 (1975).
  \item [\textsuperscript{14}] Id.
  \item [\textsuperscript{15}] Id.
  \item [\textsuperscript{16}] Cunningham v. Northwestern Improvement Co., 44 Mont. 180, 119 P. 554 (1911). The equal protection challenge in \textit{Cunningham} was raised because employers under the jurisdiction of the workmen's compensation acts were subject to both common law and statutory liability, whereas all other employers were only subject to common law liability. The Maryland statute was held unconstitutional by a lower court and no appeal was taken, see W. Malone, M. Plant & J. Little, \textit{The Employment Relation: Cases and Materials} (1974).
  \item [\textsuperscript{17}] 243 U.S. 188 (1917).
\end{itemize}
the workmen's compensation statute, the Court concluded that it was a permissible use of the state's police power to require an employer to contribute a reasonable amount to compensate the injured employee for loss of earning power. Relying on the Supreme Court's ruling, every state enacted workmen's compensation legislation by 1949.

Under early workmen's compensation statutes, loss of wages arising out of an occupational disease were not covered. The goal of these new programs was limited to providing an effective remedy for disabilities resulting from industrial accidents. Later, it became obvious that the exclusion of occupational diseases left many disabled workers without assistance under circumstances economically identical to fellow workers disabled by accidents. As a result, occupational disease laws designed to correct this omission in the workmen's compensation laws were passed. Almost all the states amended their law or passed new ones to provide compensation for losses caused by occupational diseases.

Illinois enacted its first workmen's compensation statute in 1911. In 1917, the state legislature amended the act to make it compulsory in its application to "extra hazardous" employment. Unlike other state statutes, the Illinois workmen's compensation acts have never combined the coverage of occupational diseases

18. Id. at 204, 205.
19. Workmen's Compensation: The Need for Reform, supra note 9, at 564.
21. See International Harvester v. Indus. Comm'n, 56 Ill. 2d 84, 93, 305 N.E.2d 529, 534 (1975). The court noted that:

[S]ince benefits under workmen's compensation laws were for the most part restricted to accidental injuries... many injustices arose where there was no accident and, instead, injury, disease or death were occasioned by slow, gradual, and insidious processes arising out of and in the course of employment. Occupational disease laws were designed to correct these injustices and to stand side by side with workmen's compensation laws... to place upon an employer the responsibility for disease and injury directly attributable to the employment.

25. Ill. Rev. Stat. ch. 48, § 138.3 (1975) provides:

The provisions of this Act hereinafter following shall apply automatically and without election to the State, county, city, town, township, incorporated village or school district, body politic or municipal corporation, and to all employers and all their employees, engaged in any department of the following undertakings, enterprises or businesses which are declared to be extra-hazardous...

and accidental injuries.\textsuperscript{27} Instead, Illinois passed a separate Workmen's Occupational Disease Act in 1951.\textsuperscript{28} The provisions of this Act were similar to the Workmen's Compensation Act for both benefits and procedure.\textsuperscript{29} In 1957, the legislature amended the Workmen's Occupational Disease Act\textsuperscript{30} to provide automatic coverage to all employees in hazardous employment as defined by the Workmen's Compensation Act.\textsuperscript{31}

Following the enactment of this social legislation, the compensation benefits failed to keep pace with rising wage levels.\textsuperscript{32} Increased concern over work-related injuries and disease spurred federal legislation and investigation in this area which had formerly been reserved to the states. Despite the great inroads made by the states, many critics claimed that the movement now needed additional impetus to maintain its original objectives.

\textbf{THE NATIONAL COMMISSION}

In the Occupational Safety and Health Act of 1970, Congress established the National Commission of State Workmen's Compensation Law's to "undertake a comprehensive study and evaluation of State workmen's compensation laws in order to determine if such laws provide an adequate, prompt, and equitable system of compen-

\textsuperscript{27} \textit{Workmen's Compensation: The Need for Reform}, supra note 9, at 563.
\textsuperscript{28} ILL. REV. STAT. ch. 48, § 172.36 \textit{et seq.} (1951).
\textsuperscript{29} As various commentators have pointed out, there is no real reason for not combining the two statutes into one, but as of yet, the legislature has refused to do so. See Ropiequet & Keefe, \textit{Coverage of the Illinois Workmen's Compensation Act}, 1957 U. ILL. L.F. 169 and \textit{Workmen's Compensation: The Need for Reform}, supra note 9, at 563.
\textsuperscript{30} The Workmen's Occupational Disease Act, ILL. REV. STAT. ch. 48 § 172.36 \textit{et seq.} (1975).
\textsuperscript{31} For an analysis of the Illinois workmen's compensation law as it progressed from its early years, see Angerstein, \textit{The Illinois Workmen's Compensation Act after 43 years}, 37 Chi. B. Rec. 7 (1955) and Symposium, \textit{Workmen's Compensation in Illinois}, 1957 U. ILL. L.F. 169-333.
\textsuperscript{32} \textit{The Report}, supra note 1, at 35.
\textsuperscript{33} \textit{Occupational Safety and Health Act of 1970}, 29 U.S.C. § 651 \textit{et seq.} (1970) [hereinafter cited as OSHA]. In § 676(a)(1) of OSHA, Congress declared that:

\begin{itemize}
  \item [(A)] The vast majority of American workers, and their families, are dependent on workmen's compensation for their basic economic security in the event such workers suffer disabling injury or death in the course of their employment; and that the full protection of American workers from job-related injury or death requires an adequate, prompt, and equitable system of workmen's compensation as well as an effective program of occupational health and safety regulation. \ldots
  \item [(B)] in recent years serious questions have been raised concerning the fairness and adequacy of present workmen's compensation laws in the light of the growth of the economy, the changing nature of the labor force, increases in medical knowledge, changes in the hazards associated with various types of employment, new technology creating new risks to health and safety, and increases in the general level of wages and the cost of living.
\end{itemize}
The Act required that a final report be transmitted to the President and to Congress no later than July 31, 1972. Following extensive investigation, the Commission concluded that workmen’s compensation statutes failed to achieve their original objectives. Although states had increased benefits, they had failed to keep pace with rising wage levels. The commission found that, in general, the protection furnished to American workers under workmen’s compensation programs was “inadequate and inequitable.”

In an effort to re-establish the goals of the original legislation in the present employment scheme, the following objectives for a modern compensation program were proposed:

1. broad coverage of employees with work-related injuries or diseases;
2. substantial protection against interruption of income;
3. provision for sufficient medical care and rehabilitative services;
4. encouragement of safety; and
5. prompt delivery of benefits and services.

The National Commission further generated eighty-four recommendations to serve as guidelines for states in their attempts to meet the above objectives. Of those eighty-four recommendations,

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35. 29 U.S.C. § 676(d)(2) (1970) provides:
   The Workmen’s Compensation Commission shall transmit to the President and to the Congress not later than July 31, 1972, a final report containing a detailed statement of the findings and conclusions of the Commission, together with such recommendations as it deems advisable.
36. The Commission was composed of 18 members of state workmen’s compensation agencies, business, labor, insurance carriers, the medical profession, educators and the general public. The Report, supra note 1, at 14.
37. Id. at 35.
38. Id. at 119.
39. Id. at 15.
40. Protection should be extended to as many workers as is feasible; all work-related injuries should be covered. Id. at 15.
41. A high proportion of a disabled worker’s lost income should be replaced by workmen’s compensation benefits. Id.
42. The injured worker’s physical condition and earning capacity should be promptly restored. Id.
43. Economic incentives in the program should reduce the number of work-related injuries and diseases. Id.
45. The Report, supra note 1, at 26.
nineteen were considered essential to provide an adequate level of protection for American workers.\textsuperscript{46}

Submission of these guidelines to Congress presented the possibility of federal intrusion in this area, but the Commission did not recommend abandoning the state systems in favor of complete federal control.\textsuperscript{47} Instead it advocated reform of the workmen's compensation programs by the states. However, it recommended that this voluntary state compliance with the essential recommendations be evaluated on July 1, 1975 and, if necessary, Congress should then demand compliance.\textsuperscript{48}

Since the Occupational Safety and Health Act\textsuperscript{49} had failed to provide the mechanism by which the evaluation should be made, an ad hoc committee was formed in 1975.\textsuperscript{50} The committee's purpose was to evaluate the state's compliance with the essential recommendations. The committee was composed of representatives from labor, management, the insurance industry, state workmen's compensation administrators, and federal officials. A substantial compliance subcommittee was created in order to evaluate state programs that failed to fully comply with an essential recommendation, but were not guilty of a serious deficiency. This subcommittee's report showed that the average state substantially complied with thirteen of the nineteen essential recommendations on both July 1, 1975 and January 1, 1976.\textsuperscript{51} A separate full compliance subcommittee reported that as of July 1, 1975, the average state had complied with eleven of the nineteen essential recommendations. The average compliance was also eleven in the follow up study of January 1, 1976.\textsuperscript{52}

\begin{itemize}
\item[46.] Id.
\item[47.] Id. at 126. The National Commission stated: “We reject the suggestion that Federal administration be substituted for state programs at this time.”
\item[48.] Id. at 127. The National Commission recommended that “compliance of the States with these essential recommendations should be evaluated on July 1, 1975, and, if necessary, Congress with no further delay in the effective date should guarantee compliance.” Three dissenters believed congressional action was warranted in 1972. See Supplemental Statements by Horowitz, O'Brien and Peevey, The Report, supra note 1, at 133-34.
\item[49.] Congress had provided for the National Commission's automatic termination in the OSHA, 29 U.S.C. § 676 (j) (1970) which provides that “on the ninetieth day after the date of submission of its final report to the President, the Workmen's Compensation Commission shall cease to exist.”
\item[50.] Burton, Workers' Compensation Reform, 27 Labor L.J. 399, 400 (1976) [hereinafter cited as Burton]. Mr. Burton served as the chairman of the National Commission.
\item[51.] Substantial Compliance Subcommittee, Substantial Compliance of State Laws with Worker's Compensation Recommended Standards (1976). This committee's evaluation showed a state range of compliance from 5½ to 18½.
\item[52.] Full Compliance Subcommittee, Full Compliance of State Laws with Worker's Compensation Recommended Standards (1976). The committee's evaluation showed state compliance ranged from 4½ to 15½.
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Whether this data reflects adequate state response to the National Commission’s recommendations is subject to various interpretations. Most commentators maintain the impressive response removes any need to impose mandatory federal standards.53 Others assert that the states' response was inadequate, thus warranting the establishment of federal workmen's compensation programs.54

Federal Developments

Senators Williams and Javits introduced legislation in the 93rd Congress which would have established a number of mandatory federal standards for state workmen's compensation programs. The bill55 was strongly criticized because its list of federal standards far exceeded the essential recommendations developed by the National Commission. Further criticism was directed at the questionable authority of the Secretary of Labor to promulgate new federal standards without congressional approval and the bill’s enforcement mechanism which relied on federal preemption of the state programs.56 This bill never reached the floor of the Senate.

Similar legislation was introduced in the 94th Congress. Hearings began in early 1976 on the Senate bill57 and similar companion legislation in the House.58 Many witnesses testifying at these hearings argued that legislation establishing minimum federal standards was warranted because of the states’ insufficient response to the National Commission's recommendations.59 However, they did not view these bills as the appropriate legislation.60 Again, the bills’

54. Burton, supra note 50, at 401.
55. S. 2008, 93d Cong., 1st Sess. § 328 (1973). The bill provided that unless the state's workmen's compensation law met minimum standards in the Act, the provisions of the Longshoremen's and Harbor Workers Compensation Acts would be applied within the state.
56. Burton, supra note 50, at 403.
57. S. 2018, 94th Cong., 1st Sess. § 253 (1975) established an extensive list of minimum standards for state workmen's compensation programs. The bill required each state to adopt the standards as state law and provided for federal court review of state cases to insure compliance with federal standards.
60. Id.
most serious deficiencies were the number of federal standards which transcended the essential recommendations of the National Commission. Those testifying also criticized the bills' enforcement mechanism which could open the federal courts to appeal from state court decisions. Although the hearing may have evidenced the need for federal action, the general consensus was that the current bills were unworkable. It is possible that federal legislation may be re-enacted if it contains more realistic standards and less intrusive enforcement mechanisms.

ILLINOIS' CHANGING COMPENSATION SCHEMES

Before 1975, Illinois' workmen's compensation and occupational disease laws were strikingly inadequate based upon the National Commission's recommendations. When the National Commission's report was submitted to Congress, Illinois only met five of the nineteen essential recommendations. The Workmen's Compensation Act in effect at the time was essentially identical to the one adopted in 1917. As a result the benefits provided by the Act failed to keep pace with employees' wages. Although the need for reform had long been recognized, the threat of federally imposed mandates finally provided impetus for change.

Traditionally, a procedure known as the "agreed bill" process had been used in Illinois for amending the Workmen's Compensation Act. In this process representatives of employers and organized labor would first reach an agreement on the proposed amendments to the Act. Their compromise would then be introduced into the Illinois legislature. Fully aware of the consensus reached by labor and management, the General Assembly would approve the amend-
ments in most instances.\textsuperscript{69}

During Governor Daniel Walker's administration the "agreed bill" process was not used.\textsuperscript{70} Both labor and business agreed that changes were in order in light of the Commission's recommendations. However, their interpretation of what was necessary to comply with the Commission's recommendations differed. Illinois employers, through the Illinois Manufacturing Association, introduced legislation in 1973 and 1975 that substantially complied with the National Commission's nineteen criteria.\textsuperscript{71} Both bills were defeated. In 1975, labor proposed amendments to the Illinois Occupational Disease Act and the Workmen's Compensation Act.\textsuperscript{72} These two amendments went substantially beyond the changes proposed by the employers. Since the General Assembly was heavily dominated by supporters of organized labor, both bills passed without amendment to be effective July 1, 1975.\textsuperscript{73} This legislation represented almost a complete revision of the prior workmen's compensation and occupational disease acts.\textsuperscript{74}

Because of the drastic effects of the 1975 amendments, employer groups sought modification. The legislature responded in 1976\textsuperscript{75} by deleting or modifying the provisions which had come under the strongest attack.\textsuperscript{76} However, employer groups maintain that even though the 1976 amendments alleviated some of the problems generated by the 1975 Act, they still imposed an excessive burden on management.\textsuperscript{77}

\textbf{INCREASED BENEFIT PROVISIONS}

Perhaps the most controversial 1975 amendments\textsuperscript{78} were those

\begin{itemize}
  \item \textsuperscript{69} Id.
  \item \textsuperscript{71} Illinois S.B. 567 and S.B. 848 met in substance 17 out of the 19 essential recommendations. Nelson Interview, \textit{supra} note 68.
  \item \textsuperscript{72} S.B. 234 and S.B. 235 (1975).
  \item \textsuperscript{73} Pub. Act No. 79-79 (July 1, 1975).
  \item \textsuperscript{74} Interview with Stanley Johnson, Chairman of the AFL-CIO, in Chicago (Oct. 11, 1976). Mr. Johnson stated, "our position is we fought for the changes for 40 years and won."
  \item \textsuperscript{75} Pub. Act No. 79-1450 (Oct. 1, 1976).
  \item \textsuperscript{76} See text accompanying notes 108-10, 115-16, 165-66 infra.
  \item \textsuperscript{77} IMA Bulletin, \textit{supra} note 70, at 3.
  \item \textsuperscript{78} Many other changes occurred in the 1975 and 1976 amendments which will not be discussed in this article. The more important changes included a provision broadening the definition of a "hazardous undertaking" to make coverage inclusive as to virtually all employers: penalty provisions for the employer's delay in giving the benefits; changes in the employee's notification requirement to the employer; a provision allowing the employee to choose a doctor of his own choice at the employer's expense, extra-territorial application; and
\end{itemize}
that increased the benefit rates for temporary total and permanent
total disabilities and for payments made to the spouses and children
of fatally injured employees. Prior to the 1975 Act, compensation
rates for temporary total disability were based on 65 percent of the
employee's average weekly wage.\textsuperscript{79} However, these rates had to fall
within statutorily prescribed limits. The minimum rates started at
$31.50 and progressed to $49.00 based on the employee's marital
status and number of children.\textsuperscript{80} The maximum rates started at
$100.90 and progressed to $124.30 again based on the individual's
family status.\textsuperscript{81} Because of these prescribed ceilings, middle and
upper level wage earners were forced to accept an amount much
lower than sixty-five percent of their salary.\textsuperscript{82}

The 1975 amendments base initial temporary disability compen-
sation on two-thirds of the employee's average weekly wage.\textsuperscript{83} The
minimum computation ranges from $100.90 to $124.30 depending
upon the employee's number of dependents (the maximum rates
formerly prescribed under the prior Act). However, the employee's
benefit could never exceed his average weekly wage,\textsuperscript{84} \textit{i.e.}, if two-
thirds of the employee's wages is less than the statutory minimum,
he may only receive the statutory minimum or 100 percent of his
average weekly wage, whichever is less.

The maximum rate for all accidents under the 1975 Act (including
compensation for permanent disability and death benefits) is 100
percent of the state's average weekly wage based on the state's
manufacturing industry.\textsuperscript{85} The Act also provides for progressive in-
creases in the maximum weekly compensation. By 1981, the maxi-

\textsuperscript{79} The Workmen's Compensation Act, ILL. REV. STAT. ch. 48, § 138.8 (1973).
\textsuperscript{80} ILL. REV. STAT. ch. 48 § 138.8(b) 2(B)(3) (1973).
\textsuperscript{81} ILL. REV. STAT. ch. 48 § 138.8(b) 2 (B)(4) (1973).
\textsuperscript{82} AFL-CIO Newsletter, \textit{supra} note 66, at 1.
\textsuperscript{83} ILL. REV. STAT. ch. 48 § 138.8 (b)(1) (1975).
\textsuperscript{84} Id.
\textsuperscript{85} ILL. REV. STAT. ch. 48 § 138.8 (b)(4) (1975); § 138.8 (b)(6), provides:
The Department of Labor of the State shall on or before the 15th day of May, 1976,
and on or before the 15th day of May, annually thereafter, publish the State's
average weekly wage in manufacturing industries and the Industrial Commission
shall on the 15th day of July, 1976 and on the 15th day of each July . . . publish
the State's average wage . . .; the amount . . . shall be conclusive and shall be
applicable as the basis of computation of compensation rates . . .
The current state average weekly wage in manufacturing is $231.42. Interview with Gretchen
Wolfe Benett, Industrial Commission Counselor, in Chicago (Sept. 22, 1976) [hereinafter
cited as Benett Interview].
This provision will prove beneficial only to those high-paid workers whose weekly earnings greatly exceed the state's average weekly wage since the initial two-thirds computation is still applicable.\(^{86}\)

Compensation rates for permanent total disability were altered drastically in 1975. Under the prior Act, a claimant was entitled to receive sixty-five percent of his earnings, but again was limited by minimum and maximum figures of $31.50 and $59.00 respectively. This compensation would continue until the total amount the employee received equaled the amount which would have been payable as a lump sum death benefit.\(^{87}\) Thereafter, the employee would receive an annual pension for the duration of his life in an amount equal to twelve or fifteen percent of the amount that would have been payable as a lump sum death benefit. The practical effect of this pension provision was to dramatically reduce employees' annual compensation.\(^{88}\) The most any claimant would receive was fifteen percent of $34,485, (the maximum death benefit allowed) approximately $5,100 per year.\(^{89}\)

The 1975 amendments treat permanent total disability and temporary total disability almost identically for computing compensation benefits. The compensation for permanent total disability is to be based on two-thirds of the employee's average wage.\(^{90}\) The minimum rates are slightly lower than the applicable rates for temporary total disability, since they start at $80.90 and increase up to $96.90.\(^{91}\) Again in no event may the employee receive more than his average weekly wage. Unlike the prior Act, these benefits are to be paid for the duration of the employee's disability without limitations as to dollar amount or time. The maximum rates are identical to those under temporary total disability, i.e., 100 percent

\(\text{\footnotesize{References:}}\)

86. *Ill. Rev. Stat.* ch. 48 § 138.8(b)(4) (1975). These changes were in compliance with the National Commission’s recommendations. The Commission stated:

We recommend that cash benefits for temporary total disability be at least two-thirds of the worker’s gross weekly wage. We recommend progressive increases in the maximum weekly wage benefit, according to a time schedule . . . so that by 1981 the maximum in each State would be at least 200 percent of the State’s average weekly wage.

The *Report*, supra note 1, at 19. It has been suggested that tying the maximum compensation to the state’s average weekly wage will alleviate the need for frequent amendments to the Act’s rate schedules. See *Ill. Inst. Cont. Leg. Educ., Workmen’s Compensation Prac. § 8-26* (1975).


89. *Ill. Rev. Stat.* ch. 48 § 138.7(a)(3) (1973). This maximum amount would be available only if there were four eligible children still at home.


91. *Id.*
of the state’s average weekly manufacturing wage.\textsuperscript{92}

As of July 1, 1975, the benefits to spouses and children of fatally injured employees were substantially increased. For accidents occurring prior to July 1, 1975, the basic benefit was theoretically set at 9.25 times the employee’s average annual earnings.\textsuperscript{93} However, these benefits were subject to minimum and maximum rates. The minimum rates started at $10,250 and increased up to $12,830 depending on the number of eligible children under age eighteen.\textsuperscript{94} The maximum rates started at $24,624 and progressed up to $34,485.\textsuperscript{95} The minimum statutory benefits were rarely employed.\textsuperscript{96} Unless the employee’s average earnings were well below the poverty level, the maximum benefits always applied. Once this amount was paid, the beneficiaries received no further benefits, regardless of their need.\textsuperscript{97}

The 1975 amendments provided that death benefits were to be computed on the same basis as permanent total disability. The basic benefit is two-thirds of the employee’s average weekly wage.\textsuperscript{98} The minimum benefit is the lesser of either the employee’s average weekly wage or the minimum rates applicable under permanent total disability.\textsuperscript{99}

All death benefits are payable to the surviving spouse for the benefit of the spouse and the employee’s children. Benefits for the children continue until the child reaches eighteen, or up to twenty-five if the child is enrolled in an accredited educational institution.\textsuperscript{100} The benefits are to be paid for the life of the spouse, or until the spouse remarries. Upon remarriage, the spouse will receive a lump sum payment representing two years of compensation, extinguishing all further rights.\textsuperscript{101}

\textsuperscript{92} Ill. Rev. Stat. ch. 48 § 138.8(b)(4) (1975). These changes were in compliance with the National Commission’s recommendations. The Commission stated:

\textit{We recommend that permanent total benefits be paid for the duration of the worker’s disability without limitations as to dollar amount or time. We recommend that subject to the State’s maximum weekly benefit, permanent total disabilities be at least 66 2/3 percent of the worker’s gross weekly wage.}

\textit{The Report, supra note 1, at 19.}

\textsuperscript{93} Ill. Rev. Stat. ch. 48 § 138.7(a) (1973).
\textsuperscript{94} Id.
\textsuperscript{96} Benett Interview, supra note 85; Nelson Interview, supra note 68.
\textsuperscript{97} Ill. Rev. Stat. ch. 48 § 138.7 (a) (1973).
\textsuperscript{98} Ill. Rev. Stat. ch. 48 § 138.7(a) (1975).
\textsuperscript{99} Id.
\textsuperscript{100} Id.
\textsuperscript{101} Id. The death benefit changes were in compliance with the National Commission’s recommendations. The Commission stated:

\textit{We recommend that as of July 1, 1973, the maximum weekly death benefit be at least sixty-six 2/3 percent of the State’s average weekly wage, and that as of July 1, 1975, the maximum be at least 100 percent of the State’s average weekly wage.}
The most controversial section of the 1975 amendments provided that compensation rates for temporary total, permanent total and death benefits never should be less than fifty percent of the state's average weekly wage.\(^{102}\) This provision has the effect of raising the maximum limits for employees whose wages are twice the state average weekly wage. The result was a potentially prohibitive future cost to employers.\(^{103}\) For example, the death of a highly paid married executive, earning $82,000 a year, with several children might require an employer to reserve an amount approaching one million dollars to provide the spouse half the employee's weekly salary for life.\(^{104}\)

In reality, the percentage of death cases to the total amount of claims filed is very small.\(^{105}\) Additionally, highly paid executives rarely die leaving young spouses and many eligible dependent children.\(^{106}\) However, during lobbying efforts, employers used this provision as an attention-getter to demonstrate the extensive liability possible under the amended Act.\(^{107}\) In response, the legislature in 1976 eliminated the provision which allowed fifty percent of the employee's average weekly wage as a minimum rate.\(^{108}\) The applicable amendments now provide that the maximum amount payable is 100 percent of the state's average weekly manufacturing wage. The minimum rate now prescribed is not less than fifty percent of the state average weekly wage in manufacturing\(^{109}\) thus, deleting the most criticized provision of the 1975 amended Act.\(^{110}\)

These rate changes represent legislative awareness of the plights of injured employees and their families under the pre-1975 Act. The protection offered under this Act was in most cases grossly inade-
quate, leaving the employee to bear a disproportionately heavy burden from an industrial accident. Now, under the 1975 and 1976 amendments, the equities have been more evenly balanced to insure that management will share in the costs of occupational injuries.\(^\text{111}\)

**Statute Of Limitations**

Other amendments effective July 1, 1975 increased the period in which compensation claims could be filed. The prior statute of limitations had limited the time to file the claim to within one year after the date of the accident, or the last payment of compensation in injury cases. For death cases, the applicable limitation period was within one year from the date of death or the last payment of compensation. Additionally, there was a requirement that the death must have occurred within two years of the work-related accident.\(^\text{112}\)

The 1975 amendments lengthened the applicable limitation period by providing that claims must be filed within three years of the date of accident or last payment of compensation in injury cases, or within three years from the date of death or last payment of compensation in death cases.\(^\text{113}\) Identical provisions were incorporated in the Workmen's Occupational Disease Act.\(^\text{114}\) The requirement that death must occur within two years of the date of accident was deleted. In 1976, the legislature modified the 1975 provisions.

111. Another new feature introduced by the 1975 amendments was the provision for automatic adjustment of certain benefits to reflect increases in the state’s average weekly wage in manufacturing industries. The provision applies to awards in death and permanent total disability cases. On July 15 of the second year following the date of the entry of the award and on July 15 of each year thereafter, the award is subject to adjustment. During the intervening period, if there has been an increase in the state average weekly wage in manufacturing industries, the weekly compensation rate is proportionately increased by the same percentage as the percentage of the manufacturing wage increase. The increase is paid by the State Treasurer from a special fund, the Compensation Rate Adjustment Fund. The account is funded from payments by all employers of one-half of one percent of all compensation payments made subsequent to July 1, 1975. However if there is a decrease in the state average weekly wage, the then existing compensation rate is not adjusted. The rationale behind this provision was probably the protection against inflation erosion of benefits. Although it has been criticized by employment groups as placing a future financial burden on employers regardless of their efforts to eliminate work-related accidents, it has not been deleted by the 1976 legislation.


113. Ill. Rev. Stat. ch. 48 § 138.6 (c)(2) (1975). This change was in compliance with the National Commission's recommendation. The Commission stated:

We recommend that the time limit for initiating a claim be three years after the date the claimant knows, or by exercise of reasonable diligence should have known, of the existence of the impairment and its possible relationship to his employment. . . . If benefits have previously been provided, the claim period should begin on the date benefits were last furnished.

The Report, supra note 1, at 24.

Application for death benefits now must be filed within three years after the date of death, or within two years after the date of the last payment of compensation, whichever is later. The actual cost effect of this change in the provision is questionable, since in every case a minimum of three years from the date of accident is applicable.

What has raised questions under the new Act is how the lengthened statute of limitation should be applied. The Illinois Industrial Commission has taken the position that the limitations provisions are procedural and, therefore, should be applied retroactively. Accordingly, all cases which were dismissed in the recent past for exceeding the statute of limitations could be refiled as long as the date of accident was no more than three years prior to the new date of filing. In contrast, other individuals involved in workmen's compensation litigation maintain that the right to raise the statute of limitations as an affirmative defense is a vested right and cannot be taken away by legislation.

Although the courts are not in complete agreement, the well-settled rule of statutory construction is that a statute will not be given a retroactive effect, unless such an intention of the legislature is clearly shown. Despite this general rule, an exception may be made for statutory changes considered procedural and relating to a remedy as opposed to a right. In the workmen's compensation

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116. Benett interview, supra note 85.
118. Id. The Chairman of the Illinois Industrial Commission directed the arbitrators and commissioners that:

The Statute of Limitations is effective now and applies to all cases regardless of the date of injury. In other words, any case heard on or after July 1, 1975 would be actionable unless the date of accident was more than three years prior to the filing date. This also means that cases which have been dismissed in the recent past because they were beyond the period of the Statute of Limitation may be refiled as long as the date of the accident is no more than three years prior to the new date of filing.

119. Memorandum of Wiedner and McAuliffe, Statute of Limitations, July 1, 1975 Amendments (Fall, 1975) (the amended limitations period should be given only prospective application); Braun Interview, supra note 103.
120. See In re Estate of Krotzsch, 60 Ill. 2d 342, 345, 326 N.E.2d 758, 760 (1975); Miner v. Stafford, 326 Ill. 204, 207, 157 N.E. 164, 165 (1927); Mather v. Parkhurst, 302 Ill. 236, 238, 134 N.E. 91, 92 (1922); People v. Deutsche Gemeinde, 249 Ill. 132, 137, 94 N.E. 162, 164 (1911); Tyrrell v. Municipal Employees Annuity and Benefit Fund of Chicago, 32 Ill. App. 3d 91, 99, 336 N.E.2d 97, 104 (1975).
area, the question has been presented in terms of whether a change in the limitation period for the filing of claims is a procedural or substantive change. Generally, the courts have ruled that a change in a limitation period is procedural and may be applied to existing causes of action. In reaching this decision, some courts characterized the change in the statute of limitations as one relating to the method of obtaining a remedy and not to the specific right to compensation.

However, it is equally apparent that procedural or remedial statutes cannot be construed retroactively to deprive persons of vested property rights. As the court in *Orlicki v. McCarthy* recognized, the concept of a vested right is "fraught with vagaries that defy precise definition." Whether a statute of limitation defense was such a right vesting in the individual was first determined by the Illinois Supreme Court in *Board of Education v. Blodgett*. The court viewed this right of defense to be as valuable as the right to bring the lawsuit itself. The court declared:

> When the bar of a statute of limitations has become completed by the running of the full-statutory period, the right to plead the defense is a vested right which cannot be destroyed by legislation, since it is protected there by Section two of the bill of rights incorporated in the State constitution which declares that "no person shall be deprived of life, liberty or property without due process of law."

*Blodgett* is cited frequently for the proposition that once a statute of limitations has run no subsequent legislation may revive it.

At issue now is whether the statute of limitations in the Workmen's Compensation Act comprises a vested right that is protected

671, 673 (1942); Diamond T Motor Car Co. v. Indus. Comm'n, 378 Ill. 203, 208, 37 N.E.2d 782, 784 (1941).
122. Hilberg v. Indus. Comm'n, 380 Ill. 102, 106, 43 N.E.2d 671, 672-73 (1942); Diamond T Motor Car Co. v. Indus. Comm'n, 378 Ill. 203, 207, 37 N.E.2d 782, 784-85 (1941). Both courts ruled that a change in the statute of limitations of the Workmen's Compensation Act was procedural and should be given retroactive application.
125. 3 Ill. 2d 342, 122 N.E.2d 513 (1954).
126. Id. at 347, 122 N.E.2d at 515.
127. 155 Ill. 441, 40 N.E. 1025 (1895).
128. Id. at 450, 40 N.E. at 1027.
129. Id. at 446, 40 N.E. at 1026.
by the due process clause of the Illinois Constitution. 131 Although the Illinois Industrial Commission will apply the new statute of limitations retroactively, 132 the court should inquire into whether the purpose of the statute of limitations is thwarted by this application.

By enacting statutes of limitations, legislatures attempt to serve three general purposes—providing competent evidence; promoting due diligence; and insuring personal certainty. 133 By approving a lengthened statute of limitation, the legislature has, in effect, considered the first two purposes and found them not disserved by an extension of time. However, the purpose of assuring the potential defendant that he will not be subject to court-imposed liability after a specified period of time would be defeated by a retroactive application. Employers would be subject to liability arising from causes of actions which had expired under the previous statute of limitations. It is questionable whether the legislature intended to impose this additional burden on management, in view of the substantial burden resulting from increased compensation benefits. 134 However, the legislature could have found the one year limitation period extremely short, terminating claimants rights too quickly. 135 A retroactive application of the three year limitation would at least alleviate this inequity for a small group of claimants. 136

**Occupational Disease Amendments**


131. ILL. CONST. art. 1, § 2 states: “No person shall be deprived of life, liberty or property without due process of law . . . .”


134. KELLEY, supra note 133, at 629. The author conducted a study to determine if varying limitation provisions relate to the employer’s cost. He concluded that cost differentials attributable to varying limitation provisions were probably minimal.

135. See THE REPORT, supra note 1, at 24. The National Commission notes that the problem for an employee meeting the time limit in filing his claim is particularly acute where his impairment results from a work related disease. A substantial lapse may occur between exposure to the disease producing substance and the manifestations or diagnosis of the disease.

136. Indeed one commentator has suggested eliminating time limitations entirely. This action would best achieve the purpose behind workmen’s compensation—to shift the economic burden of industrial accidents from the employee to the employer and ultimately to the consumer. KELLEY, supra note 133, at 629.

The Acts now contain identical provisions as to compensation rates, statutes of limitations, and notice provisions, and are extra-territorial in their application.

The most dramatic change enacted by the legislature was in the definition of an occupational disease. The 1975 amendments define an "occupational disease" as a "disease arising out of and in the course of employment or which has become aggravated and rendered disabling as a result of an exposure of the employment."

Further, the 1975 legislation provides compensation to employees suffering from ordinary diseases of life to which the general public is also exposed. However, these ordinary diseases must still meet the requirements of an occupational disease. These two changes eliminated the restrictions in the Occupational Disease Act which had generated extensive litigation.

The pre-1975 Occupational Disease Act provided compensation for ordinary diseases of life only in very limited circumstances. Litigation often arose where an employee was seeking compensation for contracting emphysema, tuberculosis or cancer. These diseases clearly fit into the definition of an "ordinary disease of life to which the public is exposed outside the employment." Often there was substantial evidence introduced that this ordinary disease was considerably aggravated by the employment conditions.

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140. Id.
141. ILL. REV. STAT. ch. 48 § 172.36 (b)(2) (1975).
142. ILL. REV. STAT. ch. 48 § 172.36(d) (1975), as amended, ILL. ANN. STAT. ch. 48 § 172.36(d) (Smith-Hurd 1976 Supp.).
143. ILL. REV. STAT. ch. 48 § 172.36 (1973) provided:
   (d) In this Act, the term "Occupational Disease" means a disease arising out and in the course of employment. Ordinary diseases of life to which the general public is exposed outside the employment shall not be compensable, except where said disease follows as an incident of an occupational disease as defined in this section.
144. See ILL. INST. CONT. LEG. EDUC., WORKMEN'S COMPENSATION PRACTICE §§ 9-2, 9-3 (1975).
148. ILL. REV. STAT. ch. 48, § 172.36 (d) (1975).
149. For example, in Int. Harvester Co. v. Indus. Comm'n, 56 Ill.2d 84, 305 N.E.2d 529 (1973), evidence was introduced establishing that the noxious agents involved in welding substantially aggravated the claimant's emphysema. In Rockford Transit Corp. v. Indus. Comm'n, 38 Ill. 2d 111, 230 N.E.2d 264 (1967), evidence indicated that the inhalation of the fumes caused the aggravation of the emphysema which resulted in the employee becoming
ever, if the disease did not have its origin in the employment or follow as an incident of an occupational disease, recovery would be denied. The court held that an aggravation of a pre-existing disease is an injury compensable under the Workmen's Compensation Act if the evidence shows that the aggravation of the disease was caused by an accidental injury arising in the course of employment. Subsequently, other courts used this approach to compensate those suffering ordinary diseases of life. For instance, a line of heart attack cases present a good example of a disease being translated into an accident, and therefore compensable, if the court finds the requisite causal element is present.

However, with the exception of the heart attack cases, courts more often denied than awarded compensation in this type of situation. This refusal resulted from the requirement that an injury must be traceable to a definite time, place and cause to be consid-

disabled much sooner than he would have otherwise. Finally, in Stewart Warner Corp. v. Indus. Comm'n, 376 Ill. 141, 33 N.E.2d 196 (1941), substantial evidence clearly showed that the inhalation of sulphur dioxide fumes had caused lung irritation and a flareup of latent TB. Prior to the 1975 amendments the Act defined “Occupational Disease” as a disease arising out of and in the course of employment. Ordinary diseases of life to which the general public is exposed outside of the employment shall not be compensable unless said disease follows as an occupational disease as defined in this section.

151. See note 149 supra.
152. 414 Ill. 326, 111 N.E.2d 351 (1953).
153. Id.
156. Cases which denied recovery because the disease was an ordinary disease of life and not following as an incident of an occupational disease include: Payne v. Indus. Comm'n, 61 Ill. 2d 66, 68, 329 N.E.2d 206, 208 (1975); Int'l Harvester Co. v. Indus. Comm'n, 56 Ill. 2d 84, 93, 305 N.E.2d 529, 535 (1973); Rockford Transit Corp. v. Indus. Comm'n, 38 Ill. 2d 104, 113-14, 230 N.E.2d 264, 266 (1967); Lewis v. Indus. Comm'n, 38 Ill. 2d 461, 466, 231 N.E.2d 593, 595-96 (1967); Stewart Warner Corp. v. Indus. Comm'n, 376 Ill. 141, 145, 33 N.E.2d 196, 199 (1941).
ered an accident under the Workmen's Compensation Act. As most diseases involved a gradual, insidious process, most claimants would find it impossible to meet this requirement. For example, in *International Harvester v. Industrial Commission* the employee claimed that the inhalation of irritating fumes over a six-year period constituted an accidental injury. The court found that the employee had not suffered from an accidental injury within the meaning of the Act, but rather from a gradual debilitating disease. It rejected his contention that the precise time and place requirement was no longer applicable. It concluded that neither Act provides compensation for a disability arising from the aggravation of pre-existing, ordinary diseases of life. The court noted that if "we were to adopt the fiction urged in this case, the distinction between the two acts would be obliterated and a claim for practically any disease, occupational or pre-existing, could be brought under the Workmen's Compensation Act."

In recent cases, the Illinois Supreme Court has invited the legislature to provide compensation under these circumstances. The legislature accepted this invitation and removed the restrictive language from the Workmen's Occupational Disease Act. Under the 1975 amendments it was no longer necessary to establish that the disease had its causation or inception in the employment. However, it is still necessary to establish that the disease was "aggravated" by employment conditions.

The ambiguities surrounding the meaning of "aggravation" have caused difficulty for those involved in workmen's compensation litigation. Numerous individuals have feared that the 1975 amendments would create a flood of litigation and remuneration for employees' disabilities.

To lessen the possible impact of this amendment and in response to media and constituent pressures, the legislature further amended

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158. 56 Ill. 2d 84, 304 N.E.2d 529 (1973).
159. *Id.* at 90, 305 N.E.2d at 533.
160. *Id.*
161. *Id.* at 94, 305 N.E.2d at 535.
162. See *Int'l Harvester Co. v. Indus. Comm'n*, 56 Ill. 2d 84, 93, 304 N.E.2d 529, 535 (1973); *Rockford Transit Corp. v. Indus. Comm'n*, 38 Ill. 2d 111, 114, 230 N.E.2d 264, 266 (1967) (the court notes, "If it is desirable that compensation be made under circumstances such as those in the present case, the legislature can readily make the appropriate amendments.").
the definition of "occupational disease" in 1976. The term now means "a disease arising out of and in the course of employment or which has become aggravated and rendering disabling as a result of the employment. Such aggravation should arise out of a risk peculiar to, or increased by employment and not common to the general public." This amendment clearly limits the application of aggravation, however, ordinary diseases of life are still compensable. Therefore, these 1976 changes will probably result in the alleviation of the employee's hardships exemplified in International Harvester, but not extending liability to the extent that the employer is liable for all adverse consequences which have some relation to the employment.

**Costs**

The National Commission submitted an analysis of what the cost of adopting its recommendations would be for each state. The cost estimates were calculated on the basis of a compensation program virtually identical to Illinois' 1975 act. The estimated cost increases among the states ranged from a high of sixty percent in Louisiana to 2.4 percent in Arizona. The estimated increase for Illinois was only seventeen percent, an increase substantially lower than most other states. The cost of adopting the recommendations was also computed by comparing the proportion of the payroll devoted to workmen's compensation by employers in 1972 to what they would have to contribute in 1975 to meet the National Commission's recommendations. In 1972, Illinois employers' average payroll contribution for workmen's compensation was only .657 percent. In order to meet the essential recommendations by 1975, Illinois employer's estimated contribution would increase only to .771 percent.

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166. 56 Ill. 2d 84, 305 N.E.2d 529 (1973).
167. The Report, supra note 1, at 73.
168. Id.
169. The Report, supra note 1, at 143. In Table B.1 the National Commission estimates cost increases or decreases, expressed as a percentage of current costs, of incorporating the recommendations of the National Commission on state workmen's compensation laws into state laws in effect as of January 1, 1972.
170. Id.
171. Only six states ranked below Illinois. Id.
172. The Report, supra note 1, at 145. In Table B.2 the National Commission estimates the percentage of payroll devoted to workmen's compensation premiums by employers in a representative sampling of insurance classifications.
173. Id.
174. Id. The Commission noted that while adoptions of their recommendations would
These predictions did not present the potentiality of a drastic cost increase to Illinois employers. And at the present time there is insufficient evidence to determine the real cost increases. However, the actual experience in Illinois following the 1975 amendments indicates that substantial costs may result from the revision of the acts.

Immediately following the enactment of 1975 amendments, the Illinois insurance carriers filed for a forty-six percent rate increase. The insurance companies based this increase on a prospective analysis, claiming that because of the change in benefits, they would have to obtain funds immediately for reserve purposes. The Illinois Department of Insurance, which has the statutory responsibility for approving workmen's compensation rates, routinely approved the forty-six percent increase.

In November, 1975, the insurance carriers requested another rate increase of 9.6 percent based on actual loss experience. After a hearing, the Director for the Department of Insurance determined that only a 3.6 percent increase would be approved. In April, 1976, another rate increase of 24.3 percent was requested by insurance carriers. The request was denied at that time. However, after a hearing in June, the acting Director of Insurance granted the 24.3 percent increase. Since the latter two rate increases were compounding the first, the total increase was greater than ninety percent of the pre-1975 rates.

Following this last increase, a group of trade associations and individual employers, representing a substantial portion of Illinois employers and the Illinois State Federation of Labor and Congress of Industrial Organization filed a lawsuit against the Department of Insurance. The plaintiffs charged that the June 16, 1976, rate increase was excessive and illegal and that prior increases were unsup-
In a preliminary hearing, the court determined that the plaintiffs must first pursue a remedy through the administrative procedure of the Department of Insurance. Shortly thereafter, the insurance carriers filed for a rate decrease of one percent based on cost projections from the October, 1976 amendments. The Department of Insurance is now holding public hearings on the three previous rate increases and the one percent decrease request.

Smaller firms and employers in dangerous occupations suffered the most from insurance rate changes. In some industries, rates increased up to 200 percent. And if a business complained, the insurance carriers often responded by threatening to discontinue the business' compensation coverage. Firms with substantial past losses and smaller companies were dropped by their respective insurance carriers after doing business together for years. This action was not necessarily because these firms represented a high risk, but because of the additional administrative cost for the carriers. It is the carriers' position that it is often unprofitable to underwrite these firms. The only alternatives available to these employers are

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182. Coordinating Comm. of Mechanical Speciality Contractors Ass'n v. Duncan, 76 L. 12896 (Cir. Ct. Cook Co., filed July 14, 1976). The applicable statute, Workmen's Compensation Rates, Ill. Rev. Stat. ch. 73 § 1065.1 (1975), provides: "The purpose of this Article is to promote the public welfare by regulating Workmen's Compensation and employers liability insurance rates to the end that shall not be excessive, inadequate or unfairly discriminatory.


184. Seligman Interview, supra note 175.

185. The State Insurance Director, Michael P. Duncan, appointed Professor Spencer Kimball as the independent hearing officer to hold public hearings on workmen's compensation insurance rates. The hearings commenced on September 22, 1976. Only a procedural issue has been disposed of as of this date. Kimball has granted petitioners limited discovery of the insurance companies' books. Seligman Interview, supra note 175; Illinois Department of Insurance Newsletter, September 1, 1976.

186. Nelson Interview, supra note 68. Nelson commented that the 90 percent increase represents an average of the state-wide increases. High risk operations such as construction experienced substantial increases in rates (up to 200 percent), while in other occupations (clerical) rates may have dropped.

187. Interview with Barbara Crane, Insurance Administrator, GATX Corporation, in Chicago (Oct. 1, 1976) [hereinafter cited as Crane Interview.]; Nelson Interview, supra note 68.

188. Ms. Crane's firm was cancelled by its insurer after doing business with them for over 20 years. She attributes this action in part to the firm's bad loss experience in the past, but comments that even firms with increased safety in their operations have been unable to obtain insurance. She predicts that her firm will not be able to obtain insurance, even though it is willing to pay for it; and therefore, it will probably self-insure. Such an option may not be open to a smaller firm, consequently, it may be forced out of business. Crane Interview, supra note 187.

189. Id.; Nelson Interview, supra note 68; Benett interview, supra note 85.
to self-insure or apply to the state's assigned risk pool. For a small firm it may be impossible to self-insure, since such action requires a filing of a bond and a showing of an economic capability to cover anticipated losses.

Consequently, the number of Illinois businesses and industries applying to the state's assigned risk insurance pool increased from 600 applications per year to the current rate of almost 500 per month. This pool is a refuge for those businesses which have been refused coverage by at least three insurance carriers. After determining that the business is nonetheless entitled to coverage, the Industrial Commission must assign an insurance carrier to underwrite the policy. The carrier than has no option, and theoretically, the insurance must be available at the standard rates. However, a twenty-five percent surcharge is allowed because of the company's prior loss experience. In fact, the carriers routinely assess the surcharge to all assigned risks—even new businesses that have no prior loss experience.

The average percentage of payroll now paid by Illinois companies for workmen's compensation insurance is 3.23 (per $100 payroll). This is somewhat higher than most other states, yet arguably this still represents a small amount of the actual payroll and would not justify an employer moving to another state to avoid these costs.

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190. Workmen's Compensation or Occupational Disease Insurance for Rejected Employers, ILL. REV. STAT. ch. 73 § 1083 (1975) provides:

Insurance for employers rejected by three carriers (a) when it is found by the Commission that the application of an employer for compensation or occupational disease insurance has been rejected in writing by three (3) carriers and that such employer is entitled to insurance, the Commission shall designate a carrier which shall be obligated to issue forthwith a standard policy...

191. ILL. REV. STAT. ch. 48, § 138.4 (1975) provides:

Any employer who shall come within the provisions of Section 3 . . . shall:

(1) File with the Commission an application for approval as a self-insurer which shall include a current financial statement . . . . If the sworn application and financial statement of any such employer does not satisfy the Commission of the financial ability of the employer who has filed it, the Commission shall require such employer to, (2) Furnish security, indemnity or a bond guaranteeing the payment by the employer of the compensation.

192. Benett Interview, supra note 85.

193. This surcharge is authorized by the rules promulgated by the Illinois Industrial Commission. The Department of Insurance is now undertaking to monitor special complaints in this area. Benett Interview, supra note 85.


195. Id.

196. See The Report, supra note 1, at 75. The study points out that even with the cost increase in workmen's compensation, the amount is small in relation to other benefits paid by the employer. The National Commission estimates that the total of all supplements excluding overtime, is 22.2 percent of the wages paid. Illinois' current average percentage of
The Illinois Industrial Commission has made a survey of the Commission's experience as of April 29, 1976 with the cost of benefits under the Acts as amended in July 1, 1975 as compared with the costs of benefits under the acts prior to July 1, 1975. Its statistics reveal that the average amount received per claim has not increased significantly. Indeed, the increase was so minimal that it would be wholly justified by the increase in the cost of living that occurred during the period. Admittedly, the survey evaluated only a small time period and it may be too early to compute any accurate assessment of actual cost increases.

The Commission also solicited an opinion from a self-insurance service, a service which handles the administrative procedures of firms which do self-insure. The Commission wanted to know what the service's projections were as to the increased costs attributable to the amendments. The self-insurance service anticipates a twenty to twenty-five percent cost increase. These figures raise questions as to the validity of the insurance carriers' ninety percent increases.

The insurance carriers' problem is that they cannot adequately predict the costs of these amendments. The ambiguities present in parts of the acts compound this problem. Perhaps the insurance companies' response is an over-reaction to their fear of the unknown liability.

Many of the 1975 amendments which had threatened the most drastic cost increases to the employers were deleted or modified by the 1976 amendments. For example, the provision requiring fifty percent of the employee's average weekly wage as the minimum benefit was deleted. Further, the definition of an occupational disease was limited to require that the disease must "arise out of a risk peculiar to or increased by the employment and not common

3.23 percent does not seem unreasonable in comparison with the amounts paid overall for supplements.

198. Id. The average claim for a three month period in 1975 was $3,565 in comparison to $3,647 which represented the average for the identical period in 1976.
199. Benett Interview, supra note 85.
200. Id.
201. Id.
202. Crane Interview, supra note 187. Ms. Crane pointed out that for claims arising under the Occupational Disease Act, where an employer may be liable for a disease which results from exposure to chemicals over a period of twenty years, it is now impossible to compute the liability. Additionally, the ambiguities surrounding the definition of an occupational disease, i.e. a disease which has become aggravated and rendered disabling as a result of the employment, makes liability especially difficult to predict. It is necessary to have a definitive judicial interpretation of what is sufficiently aggravating and disabling to put a boundary on this definition.
to the general public.” Despite these 1976 changes, insurance carriers anticipate only a one percent decrease in the cost estimate attributable to the legislation. The estimate was not accepted by the Department of Insurance and is currently being scrutinized along with the three previous rate increases at the Department’s public hearings.

A COMPARATIVE ANALYSIS

Although critics claim that the Illinois Workmen’s Compensation Act is driving employers out of Illinois, it is doubtful whether the statutory differences are substantial enough to justify an employer moving an entire business to avoid these costs. An analysis of state workmen’s compensation laws as of January 1, 1976 demonstrated that many states do have benefits comparable to those offered in Illinois. Forty-seven states, including Illinois, have established two-thirds of the employee’s average weekly wage as the benefit rate for temporary total and permanent total disabilities. Illinois had the third highest maximum weekly benefit allowable, $205. This figure represents Illinois’ state average weekly wage in the manufacturing industry. The high maximum in Illinois is related to the fact that Illinois is one of the largest industrial states in the United States, and consequently, has a higher average wage than most other states. Eighteen other states provide a maximum benefit for temporary total disabilities of 100 percent of the state’s average weekly wage and sixteen provide this rate for permanent total disabilities.

Illinois has no time or amount limitations on the payment of these disabilities. Thirty-four states have identical provisions. Thirty-eight states, including Illinois, provide for death benefits to be computed on the same basis as other disabilities (two-thirds of employee’s wage). Illinois provides that these death benefits will be paid to the spouse for life or until remarriage. Currently, twenty-eight states have a similar provision. Upon remarriage, the two

205. Seligman Interview, supra note 175; Nelson Interview, supra note 68.
206. INTERDEPARTMENTAL TASK FORCE ON WORKMEN’S COMPENSATION, WORKMEN’S COMPENSATION UNDER STATE LAWS (1976) [hereinafter cited as WORKMEN’S COMPENSATION UNDER STATE LAWS].
207. The current figure is $230.47. Benett Interview, supra note 85.
208. WORKMEN’S COMPENSATION UNDER STATE LAWS, supra note 206.
209. Id.
210. Id.
211. Id.
212. Id.
year lump sum payment to the spouse is paid in Illinois as in nineteen other states.213 Only five other states provide for the death benefits to continue to eligible children until age twenty-five if they are students.214

In the light of these statistics, it would seem that Illinois Workmen's Compensation and Occupational Disease Acts are not out of line with the protection offered by many other states. Additionally, the bulk of the Illinois changes are in compliance with the National Commission's standards. For example, compensation rates for temporary total and permanent total disabilities, death benefits, and statute of limitations provisions all meet the Commission's standards without transcending them.215 It is probable that the rest of the states may soon follow Illinois' lead to provide a more comprehensive, equitable compensation plan for employees in compliance with the Commission's recommendations.

CONCLUSION

In 1976 the legislature deleted the "never less than 50 percent of an employee's average income" benefit provision and narrowed the definition of an occupational disease to clarify that the disease should have a substantial relationship to the employment.216 Thus the most offending aspects (or at least most loudly criticized) of the 1975 amendments have been modified or deleted. Much of the adverse reaction to the 1975 amendments was premised on uncertainties. Additionally, this reaction was aggravated by the fact, that the Illinois Workmen's Compensation Act had not kept pace with the rising wages over the years.217 Therefore, at the time of the federal investigation in 1972, the Act needed substantial revision in order to provide adequate benefits to employees. The increased benefits were not achieved gradually, but in one comprehensive bill in 1975. Finally, the initial reaction by insurance carriers may subside after a more realistic assessment of cost can be made based on actual experience.

It is unlikely that the legislature will retract the benefit provisions. Instead, lobbying efforts in the future may focus on the actual delivery system of the benefits. Finally, the most important variable in the compensation program's future is whether the complexion of the Illinois General Assembly will remain labor oriented.

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213. Id.
214. Id. Iowa, Montana, Nebraska, Puerto Rico and Texas.
215. See text accompanying notes 92, 101 and 113 supra.
217. Workmen's Compensation: The Need for Reform, supra note 9, at 564.