

Worker's Compensation System

By Bill Hobby

You don't hear much about workers' compensation these days. That's good news.

Several years ago, workers' compensation was ranked as one of Texas' bigger business problems.

Rates were skyrocketing, up 200 percent between 1985 and 1990. Insurance carriers threatened to stop doing business in Texas. Small businesses were forced to "go bare" because of the cost of coverage and others were pushed into the workers' compensation equivalent of an assigned risk pool.

It hampered our ability to attract industry and add jobs. The new system helps bring jobs to the state.

A California telemarketing company, World Savings, has decided to locate a \$47,000,000 facility in San Antonio. This operation will employ many people. World Savings will also donate a 100-acre site for a junior college.

Marian Sandler, co-CEO of World Savings, told Bexar County Judge Cyndi Krier that the company decided to locate in San Antonio because of the work ethic there and because of the changes Texas has made in its workers' compensation system.

After years of bitter struggle, workers' compensation reform was achieved by the Legislature in 1989, but the new law actually took effect in January 1, 1991.

The reason that we don't hear much anymore is the law is working. It is lowering costs and getting higher weekly benefits to injured workers more quickly.

There are still plenty of complaints. Many workers will argue that they got more from the old system. Lawyers certainly did. And insurance rates haven't come down as quickly as we hoped. But look at these facts, based on the latest report from the Texas Workers' Compensation Insurance Facility:

- Lost time claims were down 10.8 percent in 1991 and 22 percent in the first half of 1992.
- The average cost of a claim is 27.3 percent lower.
- Medical costs were down 9 percent--when medical costs in every other area are rising.
- The benefits to injured workers are higher. The average weekly benefit paid in the first eight months of 1992 was \$362 to compared to \$191 in 1990. * Injured workers get their benefits faster--an average of 15.5 days as compared to 30 days in 1991.
- Attorneys, who were involved in 90 to 95 percent of cases, are now involved in 39 percent of the informal hearings and 53 percent of the formal hearings.
- The number of employers forced to purchase coverage from the Workers' Compensation Insurance Facility (the assigned risk pool) is down by 63 percent.

There are other benefits.

Those who abuse the system are being prosecuted. Criminal fraud charges were brought against 32 persons, resulting in three convictions, five arrests and 12 indictments.

Guidelines on medical fees resulted in savings totaling \$225.8 million. Just the requirement that injured workers get a second opinion before submitting to back surgery has resulted in savings of \$12.9 million.

In addition, employers are taking advantage of the free safety consultations provided under the law. Some 3,300 have received advice and their injuries dropped 21.7 percent. Some 900 employers with high injury rates have had to implement new safety programs because of the new law.

The bad news is that insurance companies seem to want to have it both ways. They want the lower losses achieved under the new law, and they want to raise their rates the way they did under the old one.

These companies can file their own rates, without approval from the Texas Department of Insurance. Too few have filed decreases while many signaled higher rates.

Maybe we need to reconsider rate regulation if rates don't go down, as the former Speaker of the House, Gib Lewis, suggested.

Since the rates haven't matched the recent experience, a large number of employers continue to "go bare," instead providing workers' comp-like plans permissible under the Employees Retirement Income and Security Act (ERISA).

ERISA does not specify what benefits must be provided and these plans are exempt from state regulation. In some cases employers use alternate plans or accident and health insurance policies that do not provide equivalent benefits.

But rates still have not gone down, and that is just one more reason why the public grows more and more frustrated with the whole system of private insurance. Companies lobby for reform, but when they get it they prefer to conduct business as usual. And, as in our current, critical health insurance crisis, rates only go one way--up.

The new law creates another option for Texas business--a competitive fund that can save employers from 15 to 20 percent the cost of coverage through traditional commercial carriers.

All of the evidence is that the reform is working. But the result we aimed for--lower insurance rates--is too slow in coming.

Another threat is on the horizon, one that can only be settled by the Texas Supreme Court.

Workers' compensation reform was challenged in court by the Texas AFL-CIO who charged that workers were being deprived of fundamental rights. The Business Insurance Consumers Association of Texas weighed in on the side of the state, arguing that the Legislature is free to place some restrictions on benefits and evidence that can be presented to a jury.

We hope the Supreme Court upholds reform. We hope insurance companies don't undermine it by putting their profits ahead of common sense.

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