The Federal Employees' Compensation Act

The 1916 Act is still the focal point around which the Federal workers' compensation program operates today; the program has gone through many changes on its way to becoming a modern means of compensating workers for job-related injury, disease, and death

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Various milestones stand out in recent U.S. history and serve, as it were, to mark the passage of time in the Nation: October 24, 1929, commonly cited as the beginning of the Great Depression; December 7, 1941, the attack on Pearl Harbor, plunging the United States into World War II; and November 22, 1963, the assassination of President John F. Kennedy. Everyone remembers with great clarity what they were doing at those particular times, and many individuals speak readily, if pensively, about what they were doing, how they felt when they heard the news, and what transpired in their lives over the ensuing days, weeks, and months. Even pivotal events like these, however, gradually merge into the stream of history and become only markers or flags that permit us to measure and better understand the passage of time.

Often, these milestones produce a series of related social changes. For example, the Nation's entry into World War II saw women leave home, many for the first time, to help in the civilian war effort. Subsequently, the role of women in the economy was forever changed. Similarly, the drama surrounding the death of President Kennedy set the stage for the passage of landmark civil rights legislation. And most of the social welfare initiatives, income maintenance programs, and labor laws that today are part of the fabric of American society trace their origins to the economic recovery programs introduced during the Great Depression.

Occasionally, landmark legislation arises from something less than a social cataclysm. One of the most significant social policy statutes predating the Great Depression is the Federal Employees' Compensation Act of 1916 (FECA). The culmination of more than three decades of ferment aimed at recognizing the trauma of injuries in the Federal workplace, the Act established a general-purpose program to protect essentially all civilian Federal employees and their dependents from the consequences of workplace injury and death.

Early workers' compensation programs

All U.S. workers' compensation programs are the products of the Industrial Revolution. An intriguing legislative catharsis took place between roughly 1860 and 1920, with society recognizing that among the prices to be paid for the fruits of the Industrial Revolution was the injury or death of large numbers of workers. Of course, workers had been killed or injured in workplaces throughout history, but during the U.S. Industrial Revolution, society provided no "safety valves" for the increasing numbers of workers and their dependents whose incomes were severed due to injury or death.

Responses to the problem of providing for the families of disabled or deceased workers always had been from private sources—churches, relief societies, and other families. With the Industrial Revolution, however, these sources

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were overwhelmed by the magnitude of intervention required. As a result, workers and their dependents increasingly turned to public agencies for support. Legislative machinery at all levels of government gradually recognized the problem and began to respond. Their first discovery was that the problem was not unique to the United States: because the Industrial Revolution had originated outside this country, other countries—most notably, Great Britain—had already encountered the problem and begun dealing with it.

While the Industrial Revolution started in England, workers' compensation programs have their contemporary roots in Germany. One can speculate about why Germany first chose to address this problem, but conditions in the German railroad system in the 1830's were sufficiently intolerable to motivate government intervention. Initially, the German program was defined narrowly and the benefit structure was less than generous. Nevertheless, the principle was established that providing compensation for workplace injuries and deaths was not exclusively the responsibility of the worker and his or her family. As its successors subsequently did around the world, the German program acknowledged that the responsibility belonged to the enterprise and to society as well.

During the middle of the 19th century, the idea of workers' compensation spread to England, to France, and beyond. Inevitably, resistance was encountered. Internalizing the program's costs in the production process resulted in employers passing those costs along in higher prices for products. Higher prices, in turn, made employers less competitive. Employers with higher accident rates found themselves with costs over which they had little control and, as a result, were anxious to shift the burden of compensation for workplace injuries back to employees and their families and, of course, ultimately to society.

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The vehicle for resting responsibility for workers' compensation with the employer was laws that made the employer liable for such compensation. However, during this era, a strong *laissez faire* attitude was embedded in the thinking of employers, the courts, and the legislatures. Employer liability laws stated that employers were liable for paying compensation to injured workers or dependents of deceased workers, unless the employee or a fellow worker was in some way responsible for the accident or death.

Under the provisions of the common law, employers began to assert, and the courts accepted, basic defenses that almost always precluded employees from prevailing in lawsuits. Employers argued that employees knew about and "assumed" some degree of risk when they agreed to take the job. Known as the *assumption-of-risk doctrine*, this defense postulated that certain jobs carried increased remuneration because of their inherent risks, and the employee was compensated adequately through that mechanism. In another defense, called *contributory negligence*, employers could avoid liability if, through some action, the employee caused the accident, in whole or in part. Finally, if the employer could demonstrate in any way that a fellow employee was responsible for the accident, the employer could shift the liability to that person through the *fellow servant doctrine*. In effect, the intent of this doctrine was to tell the victim of an injurious accident (or the victim's family in case of a fatality), "Don't sue the employer, sue your fellow employee."

There are differences of opinion about how well these defenses worked. Unquestionably, however, they worked well enough to deflect the problem and its costs back to employees, their dependents, and society. Consequently, soon after the turn of the century, there was a strong movement to abandon the employers' liability method of workers' compensation. Importantly, this movement contained not only workers, unions, and government leaders, but also many employers. One reason for the inclusion of employers in the movement was that they found that while, numerically, not many employees won their lawsuits, the few that did won very large awards.

What emerged from all this ferment was today's concept of workers' compensation. This concept adopted the premise that it really did not matter who was responsible for the accident or injury—income maintenance was needed just the same. Thus, removing blame and assigning responsibility to the production process itself made the workers' compensation method of income maintenance possible.

Workers' compensation in the United States. With the European experience providing a backdrop, individual States began enacting legislation pertaining to employers within their jurisdictions in the late 19th century, and the Federal Government enacted the first narrowly focused law in 1882. This law covered only Federal employees working in the "life-saving" agencies (for example, the Coast Guard), because it was believed that these employees worked in the most hazardous occupations. Once established, the connection of workers' compensation to hazardous employment was difficult to break. In some quarters, it was seen as a device for limiting coverage of programs and as a means to

contain costs. The problem, of course, was that an injury or death to one worker was devastating to that worker and his or her dependents, regardless of whether the worker was in a hazardous occupation.

Gradually, legislators came to realize that, to be effective and to achieve its goals, a workers' compensation program had to be universal. In the Federal sector, the first real attempts to generalize the workers' compensation program were in bills introduced in the Congress in 1905 and 1906 establishing a comprehensive compensation program. President Theodore Roosevelt bolstered these initiatives in a strong message in 1908 in which he

> urgently advise[d] that a comprehensive act be passed providing for compensation by the Government to all employees injured in the Government service. It is a matter of humiliation to the Nation that there should be on our statute books (no) provision to meet and partially to atone for cruel misfortune when it comes upon a man through no fault of his own, while faithfully serving the public. . . . This same broad principle which should apply to the Government should ultimately be made applicable to all private employers.[1]

The Act of 1908

After 2 years of debate, a bill was passed by the Congress and signed into law on May 30, 1908. This law

> which went into operation August 1, 1908, covered artisans and laborers in Federal "manufacturing establishments, arsenals, or Navy yards, or in the construction of river and harbor or fortification work, or in hazardous employment on construction work in the reclamation of arid lands or the management and control of the same, or in hazardous employment under the Isthmian Canal Commission."[2]

While more comprehensive in coverage than earlier efforts, the law still did not cover all Federal workers, as the President had urged, but it did demonstrate congressional willingness to expand the Federal program. For the one-fourth of the Federal labor force covered, beneficiaries received their full salary for a period of 1 year and could extend payments at a lower level of compensation for 1 additional year. Each agency paid the cost of compensation from its appropriations. There was an initial 15-day waiting period, but if the worker's disability continued beyond this period, compensation was awarded retroactively to the beginning of the period of disability. Of note, the law provided compensation only for traumatic injury.

Problems with the Act. The Act of 1908 was deficient in several fundamental ways. First, it covered only about one-fourth of the Federal work force—those in "hazardous" occupations. Next, it covered only traumatic injuries. Then, it contained a 15-day waiting period before compensation could begin. The lengthy waiting period made it vulnerable to charges that workers would malinger in the later phases of recovery to ensure that they would draw compensation. Finally, the law did nothing to encourage the prevention of accidents. These limitations became the framework upon which new legislation would be molded.

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With the foreign experience watched closely, a strong current was running both at the Federal level and in the State programs to abandon the common-law foundation of employers' liability. Ernst Freund of the American Association of Labor Legislation argued that "It is safe to say that there has been no legislative movement that any of us has witnessed that has been so strong in recent times as the movement away from the common law relating to employers' liability."[3] Launcelot Packer, a Washington attorney, argued that "The workmen's compensation law is an endeavor to eliminate the ridiculous unevenness in jury cases—large damages which result in the lucky employee who happens to win a big verdict securing a far greater amount than he knows how to manage and in the unlucky crippled employee who loses his lawsuit going to the poorhouse."[4]

The major disadvantage of employers' liability laws was that they served to destroy the relationship between the employer and employee at precisely the critical point when each side was most in need of the support of the other. Samuel Gompers argued in 1910 that

> as soon as an employee institutes legal proceedings against his employer, the employer feels that it is necessary to defend himself, if not in that particular case and for the effect upon that particular case, for the influence it will have upon other employees who may be injured. And in addition, if the litigant be defeated, he is not only financially ruined, if he ever had anything to venture in litigation, but he is physically injured and his earning power considerably limited, and he has made of his former employer an enemy, and the man upon whom he might have counted in the future for some sort of employment, for some consideration, has his back turned upon him, and he is glad to rid himself of his opponent in litigation.[5]

In a 1912 report by the House Committee on the Judiciary on H. R. 20995, a bill introduced by Congressman Leonard Howland (R-OH), the Committee reported that

> In the industrial world, as conditions exist today, it would seem that the burden of industrial accidents should not be allowed to rest on the shoulders of those who are, by reason of the accident,

rendered incapable of carrying that burden. Under present conditions, if a machine breaks down, repair parts are immediately supplied, and the cost of repairs is, without question, charged to the cost of production of the plant, and we believe that the same principle should be applied to the employee who is injured or killed. No constitutional question can be raised in connection with the pending bill; it is purely a question of willingness on the part of the Federal Government to extend the proposed relief to its own employees .... The Federal Government should be willing to treat its own employees as well at least as it proposes to compel industrial enterprises to treat their employees.[6]

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These sentiments, arising primarily from debate over the non-Federal sector, carried over to that concerning the Federal program. Congressman Reuben Moon (D-PA), a principal architect of the Act of 1908, recognized that it did not go far enough. He testified, in 1911, "I want to say with respect to that act that I had something to do with its formation. It is exceedingly illiberal; there is no doubt about that. It was intended only as a tentative measure; it was a start. It was fully expected that it would have to be enlarged."[7]

The critics of the Act of 1908 directly confronted the issue of hazardousness. In 1916, Senate testimony held that

> The theory upon which compensation laws are drawn is that you are to compensate for the injury, not for the risk that the man ran in bringing about the injury; and under modern thought there is no logical reason for making distinction between what is called hazardous employment and nonhazardous employment. The only difference is that in the so-called hazardous employment there will be more accidents, and therefore a larger bill to pay than in the nonhazardous employment; but the clerk who has a leg cut off in his work about a store is just as effectually deprived of his leg as if it was cut off by a machine.[8]

The road to 1916

One by one, the deficiencies in the Act of 1908 were exposed amid repeated attempts in both the House and Senate to craft a general bill that would meet the objections to the earlier law. While there was little testimony in opposition to these bills, those who did speak up were most concerned about potential costs of the new legislation. For example, a bill introduced by Senator George Sutherland (R-UT) mustered support because it was a "clean" traumatic injury bill and many feared that an occupational disease provision would quickly escalate costs. A major union aligned itself behind the Sutherland bill, rather than a more encompassing bill introduced by Congressman Daniel McGillicuddy (D-ME) that ultimately became the Federal Employees' Compensation Act. In testimony before the Senate Subcommittee of the Committee on the Judiciary, George L. Cain, president of the National League of Government Employees, observed that "we also recognize that that bill [the McGillicuddy bill] has been before Congress for four years, and we are behind this particular bill introduced by Senator Sutherland because it has not a provision as to occupational diseases, and we believe that it has a better opportunity of passage, even though the other bill may be a better bill in some respects."[9]

The other major cost concern was the levels of compensation set forth in the various bills. The Act of 1908 provided for the payment of the employee's full salary, after a 15-day waiting period, for a period of 1 year, with a possible extension to 2 years at a reduced rate. An administrator could quickly estimate the upper limit of Federal monetary liability under the Act. The proposed bills did not contain this limitation, and there was concern that highly paid public employees would receive too much compensation under a system with no maximum limit.

Despite these and other concerns that framed the debate, there was continued pressure for major reform. In a letter to the McGillicuddy Committee, Henry R. Seager of Columbia University called the failure of the Government to provide for injured Federal workers in a manner as generous as that provided by the States "a national disgrace."[10] Royal Meeker, Commissioner of Labor Statistics, was extremely critical of the Act of 1908. He argued that "The law that we are now operating under . . . may, without much distortion, be termed 'an act to promote malingering.' "[11] In addition, he was critical of the manner in which workplace injury costs were distributed in the Federal system. In testimony before the House, he said,

> I want to refer again to the fact that the legislation of Congress can shift the cost, as it most certainly should, but it cannot do much with the total burden of cost in the main. Accidents will happen. Someone has to bear the burden. At the present time the burden is borne by those who are least able to bear it, because they are least able to get out from under it.[12]

Edward Gainor, president of the National Association of Letter Carriers, crystallized the flavor of the debate and reduced it to its most fundamental terms. He testified that

> The only question, the fundamental question, involved in this discussion is whether or not society should bear the burden of the injured worker in any industry. If society should, then the matter of detail in framing a law should be readily settled. If society should not, then this law [the Federal Employees' Compensation Act] should not be passed. This is the one question of the issue.[13]

As the debate continued, it increasingly coalesced around several fundamental principles. John B. Andrews of the American Association for Labor Legislation testified that "The supreme tests of a compensation system are, first, the incentive provided for reducing accidents to the utmost, and, second, the promptness and certainty with which compensation claims are met."[14] Congressman McGillicuddy agreed with Andrews' statement. In 1916, in congressional hearings, he argued that "It is a good thing to compensate for injuries and disease, but it is a much better thing to prevent them."[15] All of the testimony and discussion revealed the serious deficiencies in the Act of 1908. However, in the final analysis, as Gustavus A. Weber argued, "The present Employees' Compensation Act . . . was enacted because the existing compensation legislation for United States employees had been found to be inadequate and incomplete in scope."[16]

The Act of 1916

In the 64th Congress, 10 bills were introduced—7 in the House and 3 in the Senate—to provide for a more comprehensive Federal Employees' Compensation Program. As mentioned earlier, Congressman McGillicuddy's bill became the basis of the Act of 1916. The depth of support for the new law was obvious when it passed the House on July 12, 1916, by a vote of 288 to 6. The McGillicuddy bill was then sent to the Senate for consideration. After debate and marking up, several amendments were attached, and the bill was passed on August 19, 1916, by a viva voce vote. Upon its return to the House, an amendment was added to consolidate all of the personnel in the Federal Government engaged in compensation work and to abolish all other organizations administering compensation programs. The Senate disagreed with this amendment, and a conference committee was convened. In conference, the House prevailed. The House and Senate agreed with the conference report, and President Wilson signed the new bill into law on September 7, 1916.

The major provisions of the new law included compensation for all civil employees of the Federal Government injured or killed in the performance of duty; compensation of 66-2/3 percent of monthly pay, with a maximum of $66.67 per month and a minimum of $33.33 per month; compensation for both traumatic injuries and occupational diseases; the creation of a three-member commission to administer the program; a 3-day waiting period; the provision of medical services to injured workers; and a compensation fund supported by congressional appropriations.

When the law went into effect, the Federal Employees' Compensation Commission did not exist. It took more than 6 months for the members of the Commission to be selected and sworn into office. During this period, due to the nature of the legislation (for example, it abolished authority for administering compensation programs elsewhere in the Federal sector), no adjudication of claims occurred. Claims accumulated until March 14, 1917, at which point the Commission formally initiated its activities.

The Commission attacked its backlog of claims by adjudicating temporary disabilities first. The payment of bills for medical and hospital services received second priority, and claims for permanent disabilities and death got the lowest priority. With the adjudication process in motion, the Commission began working out a permanent system of administration. U.S. entry into World War I escalated the claims workload for the fledgling Commission.

The Commission surveyed the Federal establishment to determine the character and incidence of work-related activities in an effort to establish criteria for the prevention of accidents. The survey identified hazardous aspects of Federal employment and resulted in the initiation of safety programs in agencies falling under the jurisdiction of the Department of War. The pressures of war production did little to support these efforts, and it is unclear how effective they were in reducing accident and injury rates. Although the Commission committed considerable energy to the promotion of safety during its early years, evidence such as rising numbers of accidents and claims suggests that its efforts were ineffective.

The Great Depression thrust the Federal workers' compensation program into uncharted waters.

To facilitate the administration of the compensation program, the President issued two Executive orders—No. 2455, dated September 15, 1916, transferring administrative responsibilities for the program to the Governor of the Panama Canal, and No. 2463, dated September 29, 1916, transferring administrative responsibilities to the Chairman of the Alaskan Engineering Commission—for claimants within their respective political jurisdictions. In each case, the Office adjudicated claims and paid compensation and medical benefits from its operational appropriations. The Offices were then reimbursed from the compensation fund.

With the administration of the program residing in an independent Commission, there began a period of adjustment for Federal Departments and agencies. It had been a common practice in the Post Office Department, for example, to require that employees sign statements waiving

their rights to compensation in the event that they were injured in the course of their employment. The Commission viewed these statements as improper and ignored them in the adjudication process.

Several months after the Commission began functioning, an interesting case arose. In a Commission meeting on October 8, 1917,

> Commissioner Keegan stated [that] it had just come to his attention that certain employees of the Post Office Department, particularly letter carriers, are required, when they use bicycles under certain circumstances in the collection of mail, to sign agreements waiving their right to compensation if injured when riding bicycles. The Secretary was therefore instructed to write to the Postmaster General calling attention to the impropriety of this practice and requesting an explanation of the same.[17]

The 1949 amendments to the Federal Workers' Compensation Act launched the workers' compensation program in a new direction.

While the Postmaster General ultimately relented on the waiver requirement, the Commission demonstrated through its actions that it was serious about this aspect of the law. On October 17, 1917,

> The Commission approved the claim of George M. Gerhauser, a letter carrier at the Washington, D. C. Post Office, who on September 25, 1917, was injured while riding his bicycle in connection with his duties. Mr. Gerhauser had signed, at the instance [sic] of the local post office officials, a waiver of his right to compensation if he should be injured while riding the bicycle. The Commission considered such waiver entirely improper, and as having no bearing whatever upon Mr. Gerhauser's right to compensation from the Commission.[18]

Throughout its three-decade existence, the Commission produced 29 annual reports to the Congress. (It did not prepare a report in 1942 because of the paper shortage during the war.) The first four reports contained descriptions of the cases that the Commission decided, but this practice was discontinued because of the high case load. Most of the reports, particularly in the early years of the Commission, contained recommendations to the Congress for legislative changes. These recommendations provide insights into the types of issues and problems the Commission confronted during the initial years of the compensation program. Among the recommendations that persisted throughout those years are the following:[19]

> That the act be amended so as to provide monthly compensation for total disability not to exceed $100 nor less than $50, unless the employee's monthly pay is less than $50, in which case his monthly compensation shall be the full amount of his monthly pay.

> That the act be amended so that, instead of terminating a widow's compensation immediately upon her remarriage, she shall be paid in such event two years' compensation in twenty-four equal monthly installments.

> That the act be amended so as to provide for the payment of compensation to a dependent parent until such parent dies, marries, or ceases to be dependent, instead of limiting the payment of compensation of such parents to a period of eight years as is provided in the present law.

Each of these recommendations arose from the Commission's perception that the program was in some sense inequitable or could be improved through more effective administration. The Commission was relatively successful with the Congress. However, the first major amendments to the Act did not occur until 1927. These amendments did two things: increased the maximum amount of compensation to $116.66 and the minimum to $58.33, and increased funeral expenses from $100 to $200.

Years of crisis

The onset of the Great Depression in 1929 thrust the Federal Employees' Compensation Program into uncharted waters. The program had expanded steadily from 1916 to the late 1920's. The Act of 1916 was essentially intact, and the Commission was administering a reasonably efficient compensation program. As the economic depression gained momentum, the Commission found itself immersed in several new compensation programs that appeared to be similar to and consistent with the principles underlying the Act of 1916, but in fact were quite different.

The Nation was struggling with an economic calamity, and the rules and principles that had been accepted earlier were now thrust aside. Before the depression reached bottom in 1933, a bewildering array of innovative initiatives was thrust into the economy. However, it would be a mistake to suggest that the Federal Government had a plan delineating these changes. In any event, the domestic and international economies were truly out of control, and the spiraling downturn went unchallenged for the better part of 3 years.

As the economic recovery program began to take shape, two principal pieces of legislation emerged. The first was the Act of March 31, 1933. Section 3 of the act, entitled "An act for the relief of unemployment through the performance of useful public work, and for other purposes," approved March 31, 1933, extended the provisions of the Federal Employees' Compensation Act to enrollees in the Civilian Conservation Corps and other persons employed under that emergency legislation. However, this sec-

tion was repealed by the Emergency Appropriation Act, which was approved June 19, 1934, and which took effect in fiscal year 1935. Enrollees in the Civilian Conservation Corps were subsequently covered by the act of February 15, 1934[20] (see below).

The second piece of legislation that took up much of the Commission's attention during the economic recovery program was "The act approved February 15, 1934, providing compensation for employees of the Civil Works Administration who suffer traumatic injury while in the performance of duty."[21] This legislation was an appropriations act that "included statutory authority extending the provisions of the Federal Employees' Compensation Act of September 7, 1916, subject to certain conditions and limitations, to employees of the Civil Works Administration."[22] The Commission believed that the Act had much broader application and content than companion legislation and observed that

> It might appropriately be designated as the Federal Emergency Workmen's Compensation law, especially in view of the fact that the provisions relating to compensation for disability and death have been made applicable to other emergency relief employments. This law has been made applicable to enrollees in the Civilian Conservation Corps, employees of the Works Progress Administration and other Federal agencies who receive security payments from funds provided by the Federal Emergency Relief Appropriations Acts of 1935 and 1936, and persons receiving payments from the United States for services rendered for the National Youth Administration.[23]

While the level of funding for the emergency programs was modest in the early years, it was the clear intention of Congress not to commingle the "regular" Federal Employees' Compensation Program with the several emergency programs. In its *Twentieth Annual Report*, the Commission observed that

> It apparently was the intention of the Congress that the cost of all compensation benefits extended to these emergency employments should be paid out of the relief appropriation through which the respective emergency work programs were made possible. To accomplish this purpose provision was made to set aside from funds provided by the relief appropriation acts such sums as the Commission with the approval of the President estimated and certified to the Secretary of the Treasury as necessary for administrative expenses and the payment of compensation. Pursuant to this authority, four special funds have been established in the Treasury to cover the cost of compensation benefits in connection, respectively, with the Civil Works program, the Civilian Conservation Corps, and the works program authorized by the Federal Emergency Relief Appropriation Act of 1935, and the program authorized by the Relief Appropriation Act of 1936.[24]

The onset of World War II again placed a heavy new burden on the Commission. Civilian Federal employment expanded rapidly, from about 750,000 employees in the late 1930's to more than 3 million employees by the mid-1940's. (See table 1.) Much of the growth was necessary to address the domestic need for the production of war materials and the movement of these materials in support of the war effort.

As the Commission's work load expanded rapidly, its bureaucratic status plummeted. The Commission was quickly thrust to the bottom of the bureaucratic pecking order when war began. While the work load of the Commission was two and one-half times larger in 1942 than in 1941, the Commission responded to the challenge with minimal additional resources. Whatever priority rating the Commission had, it continued to perform its functions effectively. The work load remained high during the war years, but after the war ended, accidents and claims began a slow decline. By mid-decade, it became apparent that sentiment for a structural change had arisen. The most significant change was the dissolution of the Commission and the absorption of its compensation functions into the Federal Security Agency.

Moving to the Department of Labor

It was not until the end of World War II and the creation of the Federal Security Agency to absorb the Commission and a variety of other Federal agencies that the remnants of the depression era finally faded away. All of the economic recovery programs that were initiated in the 1930's were integrated into other programs and lost their identities or were simply abolished by congressional action. As the Commission had repeatedly observed throughout most of the depression years, the beneficiaries of the Federal Employees' Compensation Act of 1916 that were

Table 1. **Injuries and fatalities paid for under the Federal Employees' Compensation Act, 1941–45**

Year ended June 30	Number of employees	Nonfatal lost time injuries	Fatal injuries	Days lost	Total direct cost per employer per year
1941	1,598,000	34,031	481	3,709,839	$4.87
1942	2,664,000	63,181	470	4,461,610	5.28
1943	3,166,000	88,490	724	6,613,164	5.64
1944	3,365,000	80,798	736	6,779,408	5.85
1945	3,375,000	63,005	373	3,933,514	4.86

SOURCE: *Annual Reports of the U.S. Employees' Compensation Commission* (Washington, DC, Government Printing Office, various years).

placed on the compensation rolls under the various economic recovery programs would remain a liability to the Federal Government long after the programs disappeared.

After three decades of administration by the Employees' Compensation Commission, the Federal workers' compensation program moved twice within the next 4 years. Under President Truman's Reorganization Plan Number 2 of May 16, 1946, the Commission was abolished, and its functions were transferred to the Federal Security Agency on July 16, 1946. Basically, the Agency adopted, without modification, the program activities and regulations developed by the Employees' Compensation Commission. The Federal Security Agency created the Bureau of Employees' Compensation to administer the law and instituted the Employees' Compensation Appeals Board as a quasi-judicial mechanism for resolving disagreements with Bureau decisions and orders.

The 1960 amendments took the largest step in the direction of improving safety and health of all amendments to the Act.

There is no accurate estimate of the numbers of individuals that were carried forward into the Federal Security Agency and, ultimately, the Department of Labor, but the number was undoubtedly large. In 1991, there were still 173 claims being paid that arose under programs of the Great Depression.

Not long after the Bureau of Employees' Compensation was created by the Federal Security Agency, President Truman created the Hoover Commission to study the structure of the executive branch and provide him with recommendations to strengthen and improve its efficiency. One of the Commission's recommendations was to transfer the Bureau to the Department of Labor. In a message to Congress on the matter, the President signaled his agreement with this recommendation.[25] In justifying his agreement, the President argued that "This workmen's compensation system, which is designed to mitigate the hardships attendant upon the death or disabling injuries of employees growing out of their employment, is clearly a labor function and is closely related to other programs of the Department of Labor."[26] In addition, he noted that there was a precedent for the transfer in the evolution of the executive branch of Government. He observed that "Prior to 1916 the Federal system of workmen's compensation was carried out under the Secretary of Labor, or his predecessor, the Secretary of Commerce and Labor."[27]

Probably the strongest argument that supported the transfer of the Federal Security Agency functions to the Department of Labor was that the Department had responsibility for workplace safety programs and accident prevention programs in and out of Government. This area of responsibility was important because "through the 1949 amendments to the Federal Employees' Compensation Act, the Bureau of Employees' Compensation was given increased responsibilities with respect to accident prevention and safety."[28] Clearly, the President thought that the application of these responsibilities was within the purview of a Cabinet-level Department.

New directions

The 1949 amendments to the Federal Employees' Compensation Act launched the workers' compensation program in a new direction. The annual report of the Secretary of Labor for fiscal year 1950 heralded these amendments with the assertion that "Headline news in the field of workmen's compensation was made during the past year when President Truman on October 14, 1949, signed Public Law 357. Under the old law, compensation was computed only on the first $2,100 of annual wages received, yet nearly 90 percent of the injury cases showed annual wages above this figure."[29] In addition, the amendments established several other provisions of the law that have carried forward to the present, including schedule awards benefits (compensation provided for specified periods for permanent loss, or loss of use, of specified parts or functions of the body—for example, eye, arm, or leg), and provisions for personal attendants and vocational rehabilitation. The amendments eliminated two aspects of the workers' compensation program that had been weaknesses from the very beginning. The first was the expansion of the definition of "employee" to include "officers" of the Federal Government. The second was a provision that made the Federal Employees' Compensation Act an exclusive remedy. Finally, in addition to increasing the maximum compensation payable from $116.66 per month to $525 per month, the amendments provided that "in instances of permanent injury the previous requirement of a 3-day waiting period be waived."[30]

The 1949 amendments did not resolve all of the program's problems. There was still the problem, for example, of delayed claims adjudication that caused claimants difficulty in maintaining personal income flows. There was also the ongoing problem of maintaining parity between changes in the economy and the level of benefits under the Federal Employees' Compensation Act. And a serious question was raised about the need for a cap on the benefit structure in the Federal program. Injured Federal workers were placed on hold for the duration of their disability with respect to receiving basic Federal benefits such as seniority, leave credits, promotions, and so forth. The appeals process, termi-

nating in an administrative system, had caused concerns from the earliest years of the program. Finally, exclusive reliance on Federal or federally designated physicians and Federal hospital or medical facilities raised questions about the quality of service provided and the objectivity of the medical appraisal. All of these issues became the fodder for a debate in the last half of the 1960's and the first half of the 1970's that resulted in a continuous stream of legislative proposals.

Soon after the Federal Employees' Compensation Commission came into existence, it began a campaign to improve safety and health in the Federal workplace. The campaign was spurred not only by humanitarian concerns for workers but also because of cost containment. The 1960 amendments to the Federal Employees' Compensation Act took the largest step in the direction of improving safety and health of all amendments to the Act. Among other things, the 1960 amendments established a charge-back program in which Federal agencies are required to absorb, through the budget process, the direct cost of accidents, injuries, and deaths. This program placed the responsibility for being responsive to safety and health issues in the workplace directly on those who have control over safety and health in their organizations.

In 1966, the Congress amended the Federal Employees' Compensation Act to remove the fixed dollar limits for compensation, linked benefit levels to the GS-2 and GS-15 Federal grade levels for minimum and maximum rates, respectively, and authorized cost-of-living increases.

The Occupational Safety and Health Act of 1970 set the stage for a major shift in Government policy in the direction of being more responsive to safety and health issues in the private sector workplace. Some argued that, with this new emphasis, there was no longer any need for the charge-back mechanism used to keep Federal agencies responsive. Nonetheless, the charge-back mechanism remained a part of the administrative structure of the Federal Employees' Compensation Act and has become an established part of the overall workers' compensation program. There have been no serious attempts in recent years to seek repeal of or changes in the charge-back system.

In 1974, amendments to the Act had the effect of moving the 3-day waiting period from the first 3 days of disability to the first 3 days following a 45-day continuation-of-pay period. (Already a part of the Act was the stipulation that if disability persisted beyond 14 days after the continuation-of-pay period, the 3-day waiting period would be waived altogether.) The General Accounting Office had serious problems with this scheme. It argued that, because injured employees remained in a full-pay status from the first day of injury, there would be no incentive to remain at work, even when the injury was minor. Combined with the free-choice-of-physician provision—also provided by the 1974 amendments—this consideration established a process in which a medical evaluation that was necessary to prevent abuse was essentially precluded. In other words, if the employee's physician found the employee disabled due to the injury, the agency had little recourse but to provide continuation of pay. If a second medical opinion was needed, by the time it was scheduled and conducted, the employee was usually back to work. By regulation, second medical opinions are within the exclusive jurisdiction of the Office of Workers' Compensation Programs.

By 1975, the pattern of claims activity under the Federal Employees' Compensation Act was established. The following tabulation shows the trend in lost-time traumatic injury claims of Federal employees from 1970 to 1979:[31]

Fiscal year	*Number of claims*
1970	17,000
1971	14,000
1972	12,000
1973	16,000
1974	12,000
1975	37,000
1976	80,000
1977	92,000
1978	94,000
1979	101,000

Note how, in 1976, the first full year after the 1974 amendments, there was a dramatic increase in traumatic lost-time injury claims—to more than 80,000 from a mere 12,000 in 1974. The number of claims continued to climb, until it peaked at more than 100,000 in the early 1980's. The Office of Workers' Compensation Programs floundered in its attempts to address this burgeoning case load, and the result was huge backlogs and long delays in adjudication. In response to the problem, the Reagan Administration initiated legislation in 1981 to eliminate the continuation-of-pay provision, reinstate a 7-day waiting period, and provide more involvement of the agencies in the adjudication process. Strong union opposition prevented these initiatives from being enacted.

The compensation program today

The mission underlying the activities of the Federal Employees' Compensation Program on its 75th birthday may be summed up in the

succinct statement that it is to return Federal workers to gainful employment through efficient and equitable claims management. The task of the Office of Workers' Compensation Programs is to achieve this mission, through effective intervention. The impetus to intervene is grounded chiefly in two considerations. First, it is believed that quick and meaningful intervention, including medical diagnosis, is a critical step in limiting the period or severity of a disability and the time lost from work. And second, it is felt that workers with repeated occurrences of disability for extended lengths of time can, with constructive, sensible, and sensitive rehabilitation, return to partial or full work roles.

The Federal Employees' Compensation Act has remained basically true to its original purpose, with replacement of wages as the aim of compensation.

One of the more intriguing aspects of the Federal Employees' Compensation Program is that claims are handled today in much the same manner as they were in 1916. Admittedly, the adjudication process is more complex, but the principles applied to claims adjudication are similar. An injury, death, or illness produces a claim. The employer then has the responsibility to agree with or to controvert the claim. In either case, the claim is submitted to the compensation program's district office, and adjudication begins. Upon assignment of the case to a claims examiner, the entire responsibility for claims management rests with the district office. The claims examiner ascertains the facts of the case, obtains medical evidence, and frequently pursues additional lines of investigation, until sufficient evidence to make a decision is on file.

Denial of a claim is accompanied by review and appeal rights for claimants who disagree with the decision and seek recourse inside or outside the district office. There are currently three routes of review and appeal. First, the claimant may ask the district office for a reconsideration of the decision. At present, reviews of this variety are assigned to a senior claims examiner, who reviews the case completely and renders a decision. Second, the claimant may request a hearing on the original district office decision from the Branch of Hearings and Review for a review outside the regional office. Third, the claimant may bypass the first two procedures and proceed directly to the Employees' Compensation Appeals Board. There is no appeal beyond this board, but the claimant may approach the district office for reconsideration. Federal employing agencies have no appeal rights.

The claims examiner is the pivotal element in the adjudication process, possessing considerable responsibility because of the judgment and discretion that must be applied in rendering a decision. Support and consultative mechanisms are available, but, ultimately, in 1991 as in 1916, the decision rests with the claims examiner.

Adaptable and changeless

The Federal Employees' Compensation Program has remained basically true to its original purpose, with replacement of wages as the aim of compensation. However, the program has adapted to changes in the economic, social, and political milieux and has moved toward becoming a workers' compensation program with a social welfare flavor. In other words, benefits flow to claimants on the basis of factors other than loss of wages (for example, benefit supplements based on family composition and schedule awards for the loss or loss of use of bodily parts or functions).

The 1980's witnessed a stabilization of the Federal Employees' Compensation Program and the initiation of several changes that will have long-term impacts on program operation. First, in 1986, the program generalized, to the overall beneficiary population, a decision by the U.S. District Court for the District of Vermont that provided claimants with property rights to Federal workers' compensation benefits. The significance of this change in the program is that by making the benefits property rights, under the Constitution, due process procedures—the right to receive notification and the opportunity to respond—apply. Prior to 1986, the program could terminate benefits with little or no advance notice.

Second, to improve the quality of the adjudication process and assist injured workers in returning to gainful employment, the Federal Employees' Compensation program initiated, in the mid- and late 1980's, a nurse intervention program, the payment of relocation expenses from the compensation fund for workers who can benefit from geographic relocation to obtain work, mandatory second medical opinions for certain nonemergency surgical procedures, staffing rehabilitation specialists in the district offices to coordinate and facilitate the return-to-work process, and an automated medical fee schedule to ensure that customary and reasonable fees are charged by the medical community.

Finally, one of the most controversial aspects of the Federal Employees' Compensation program has been its exclusively administrative nature. The Secretary of Labor has exclusive jurisdiction over the entire program, including the several appeal and review processes. This secretarial authority has been challenged in several courts, but on each occasion, the authority has been sustained. A 1987 First Circuit Court decision in *Paluca* v. *Secretary of Labor* reaffirmed the Secretary's authority, and a 1990 decision in *Woodruff* v. *United States of America* further affirmed and clarified the authority.

The latter decision is on appeal, but to date, the exclusively administrative nature of the program seems well established.

The foregoing account is not intended to be an evaluation of the success of the Federal Employees' Compensation program. However, it is clear that the program has, in recent years, embarked on a new path of improving the character and quality of its claims adjudication. From its nadir between 1975 and 1985, during which the program wrestled with huge backlogs and extreme delays, it has today become increasingly efficient, enjoying virtually no backlogs of cases and consistently maintaining adjudication time frames that are within reasonable boundaries, as compared with other State and Federal benefit programs. Today's program also emphasizes effective return-to-work processes and innovative claims management that could not even have been considered 6 or 7 years ago.

Undoubtedly, there will always be a legislative agenda for the program. Currently, that agenda focuses on wage replacement issues and the concerns raised in the early 1980's. There appears to be little interest today in opening the law to substantial amendment. The program has adapted to an ever-changing environment. More changes, unquestionably, are on the horizon. If it maintains ongoing sensitivity and adjustment to change, the Federal Employees' Compensation Program will continue to serve its beneficiaries efficiently and effectively. □

Footnotes

[1] U.S. House of Representatives, Committee on Education and Labor, Hearings before the Subcommittee on Safety and Compensation, *Amendments to Federal Employees' Compensation Act*, 86th Cong., 2nd Sess., February 10, 23, 24; March 8, 23, 24, 1960 (Washington, DC, Government Printing Office, 1960), p. 124.

[2] U.S. House of Representatives, Committee on the Judiciary, *Federal Employees' Compensation*, Serial 16—Part 3, 64th Cong., 1st Sess., January 28, 1916 (Washington, DC, Government Printing Office, 1916), p. 28.

[3] "Statement of Ernst Freund, Representing the American Association of Labor Legislation," Hearings before the Employers' Liability and Workmen's Compensation Commission, U.S. Senate, 62nd Cong., 1st Sess., Document No. 90, Vol. 1 (Washington, DC, Government Printing Office, 1911), p. 17.

[4] "Statement of Mr. Launcelot Packer, Attorney at Law, Washington, D. C.," *Workmen's Compensation*, Hearings before the Committee on the Judiciary, U.S. House of Representatives, 61st Cong., on H. R. 1, February 17 and March 15, 1910 (Washington, DC, Government Printing Office, 1910), p. 29.

[5] "Remarks of Mr. Samuel Gompers, President of the American Federation of Labor," in *Workmen's Compensation*, Hearings before the Committee on the Judiciary, U.S. House of Representatives, 61st Cong., on H. R. 1, February 17 and March 15, 1910 (Washington, DC, Government Printing Office, 1910), p. 19.

[6] U.S. House of Representatives, *Report*, Federal Employees' Compensation Bill, Report No. 578, 62nd Cong., 2nd Sess., April 20, 1912 (Washington, DC, Government Printing Office, 1912), p. 10.

[7] U.S. Senate, "Hearings before the Employers' Liability and Workmen's Compensation Commission," Document No. 90, Volume 1, 62nd Cong., 1st Sess., 1911 (Washington, DC, Government Printing Office, 1911), p. 20.

[8] U.S. Senate, *Accident Compensation to Government Employees*, Hearings before the Subcommittee of the Committee on the Judiciary, 64th Cong., 1st Sess., February 26, 1916 (Washington, DC, Government Printing Office, 1916), p. 27.

[9] U.S. Senate, *Accident Compensation*, p. 23.

[10] U.S. House of Representatives, Committee on the Judiciary, *Federal Employees' Compensation*, Serial 16—Part 3, 64th Cong., 1st Sess., January 28, 1916 (Washington, DC, Government Printing Office, 1916), p. 11.

[11] House of Representatives, *Federal Employees' Compensation*, p. 31.

[12] *Ibid.*, p. 33.

[13] *Ibid.*, p. 25.

[14] *Ibid.*, p. 16.

[15] *Ibid.*, p. 5.

[16] Gustavus A. Weber, *The Employees' Compensation Commission: Its History, Activities and Organization* (New York, D. Appleton and Co., 1922), pp. 7–8.

[17] U.S. Employees' Compensation Commission, *Minutes*, Washington, DC, Oct. 8, 1917, p. 85.

[18] U.S. Employees' Compensation Commission, *Minutes*, Washington, DC, Oct. 17, 1917, p. 102.

[19] U.S. Employees' Compensation Commission, *Second Annual Report*, July 1, 1917 to June 30, 1918 (Washington, DC, Government Printing Office, 1918), pp. 18–22.

[20] U.S. Employees' Compensation Commission, *Nineteenth Annual Report*, July 1, 1934 to June 30, 1935 (Washington, DC, Government Printing Office, 1935), pp. 31–32.

[21] U.S. Employees' Compensation Commission, *Eighteenth Annual Report*, July 1, 1933 to June 30, 1934 (Washington, DC, Government Printing Office, 1934), p. 1.

[22] U.S. Employees' Compensation Commission, *Twentieth Annual Report*, July 1, 1935 to June 30, 1936 (Washington, DC, Government Printing Office, 1936), p. 1.

[23] Employees' Compensation Commission, Twentieth Annual Report, pp. 1–2.

[24] *Ibid.*, p. 27.

[25] See U.S. Senate, *Reorganization Plan No. 19 of 1950, Transfer of Employees' Compensation Functions from Federal Security Agency to Department of Labor*, Report No. 1549, 81st Cong., 2nd Sess., May 10, 1950 (Washington,

DC, Government Printing Office, 1950), p. 2.

[26] U.S. Senate, *Reorganization Plan No. 19*, p. 5.

[27] *Ibid.*, p. 6.

[28] *Ibid.*

[29] U. S. Department of Labor, *Strengthening the Economy: Thirty- Eighth Annual Report of the Secretary of Labor, Fiscal Year 1950* (Washington, DC, Government Printing Office, 1951), p. 94.

[30] U.S. Department of Labor, *Strengthening the Economy*, p. 95.

[31] Adapted from *Multiple Problems with the 1974 Amendments to the Federal Employees' Compensation Act*, Report no. HRD-79-80 (General Accounting Office, June 11, 1979), p. 5.

Concession bargaining in the 1980's

Even if the long-run trend in labor economics is away from union-centered research, developments in the union sector in the 1980's helped maintain the interest of economists. Specifically, unions underwent a period of concession bargaining involving pay freezes and cuts, work rule relaxations, and so forth. Unions in recent years could be forgiven if they felt like patients with "interesting" diseases who are therefore surrounded by inquisitive doctors. However, the union sector in the 1980's did provide researchers with something as close to laboratory experiments as can be found in economics.

What would happen to wage bargaining if markets were suddenly made more competitive due to deregulation? What would happen if low-cost foreign suppliers suddenly appeared due to dollar appreciation? What would happen to escalator clauses if inflation rates dropped markedly? The 1980's brought about all of these developments, providing a new stimulus for union-sector research.

—Daniel J.B. Mitchell
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