U.S. worker rehabilitation in international perspective

The rehabilitation system established for employees of the U.S. Federal Government who are injured on the job could serve as a good model for social programs

Monroe Berkowitz

Throughout the world, nations are reexamining their social welfare programs in the face of rising costs. The Dutch, for example, are concerned about an increasingly expensive welfare system that appears to encourage idleness. The cost of supporting persons on disability, combined with sickness benefits, amounted to 13.4 percent of the Netherlands' gross domestic product in 1988. That percentage was nearly double the 1970 share and significantly more than the proportions for neighboring countries, although Germany was not far behind with 11.9 percent.[1] In an effort to control costs, Sweden has amended its sickness insurance program to reduce benefits paid during the first 3 days of illness.[2] The Canadian province of Ontario has substantially revised its method of paying permanent disability benefits in an effort to encourage people to return to work, and State after State in the United States is amending its work injury statutes to bring costs under control.[3]

Our study does not present the usual examination of the trends in a nation's social welfare costs. Our concentration is on rehabilitation programs, a sometimes ill-defined set of services, the aims of which are often obscure. We do not look at all social welfare programs, or even all work injury programs, but focus instead, for purposes of international comparison, on the one program covering the U.S. Government's own employees—the Federal Employees' Compensation Act. Our rationale for this narrow focus is that examining rehabilitation programs is one good way to evaluate the incentive structure underlying the social welfare system. In singling out the U.S. Federal program, we concentrate on the one program which is run by the Federal Government itself and which, we argue, should serve as a model for the States and other countries to follow.

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Compensation systems objectives

Implicit in the above discussion of European efforts to seek a cure for a sick welfare system is the notion that a work injury program has objectives other than the paying of cash benefits. As was recognized from the inception of such programs in Europe in the late 1890's, and in the United States in the early 1900's, these objectives are: 1) to prevent accidents or minimize their effects by providing incentives for employers to invest in workplace safety programs and in rehabilitation of injured workers, and 2) to allocate the costs of the accidents to the firms in which they occurred.[4]

It can be argued that the Federal Employees Compensation Act (FECA) has exactly these same objectives. If the program had been designed solely to transfer funds to persons who are injured in the course of their work, that aim could more easily be accomplished through any of several other existing social insurance programs. Instead, the FECA program, in common with each of the State workers' compensation programs, goes through the sometimes arduous task of distinguishing work injuries from those

that occurred off the job. This process of assigning responsibility for injuries to the firms in which they occurred is intended to provide employers with incentives to maintain a safe workplace, an issue explored by James Chelius, pp. 22–25. Here we concentrate on rehabilitation of injured workers and its role in an efficient program of workers' compensation.

A brief history

A search is on for ways and means to contain ever-rising costs.

Work injury programs are among the first of the social insurance programs to be adopted by nations as they industrialize. They are also the most prevalent type of social insurance program. One hundred and thirty-six countries have a program that provides compensation for work-connected injuries.[5] In contrast, only 40 of those countries provide some form of unemployment insurance.

The enactment of laws that mandate insurance benefits in the event of work injuries necessarily entails some controversy about which portions of the labor force will be covered. For example, mandating the benefits for the private sector compels attention to the plight of the government's own employees. The order in which the private and government sectors have been provided with coverage differs from country to country and sometimes forms a complicated sequence, as in the case of the United States.

The first major impetus for U.S. work injury legislation came in 1908, when, under President Theodore Roosevelt's leadership, Congress enacted the first effective U.S. compensation law covering civilian employees of the Federal Government. Although crude in construction and limited in application, "this Act gave Federal leadership and prestige to the movement and stimulated more active interest in many states."[6] In the same year, New York passed a compensation statute which was later declared unconstitutional. Three years later, however, the dam burst, as State after State passed workers' compensation laws.

In 1916, the Federal Government passed the basic national statute we have today, although that law has been amended many times since the date of original passage, most substantially in 1949, 1960, and 1974. In a sense then, the Federal Government was a pioneer in the area of work injury legislation. However, the Federal Government lagged behind Wisconsin, Massachusetts, California, New Jersey, and New York, the most populous industrialized States—all of which had passed broad and comprehensive statutes 3 or 4 years before the Federal Government acted in 1916.[7]

In other countries, the government's own employees are covered for work injuries in a variety of ways. The government employees might be folded into the programs covering all workers, or special programs might be established for them. In those nations with federal systems, such as Australia and the United States, State and local employees are for the most part covered under the statutes of their individual jurisdictions, whereas the Federal employees come under their own programs, as in the COMCARE program in Australia or FECA in the United States.[8]

In Germany and Austria, work injury programs are financed and administered by Social Insurance Institutes, with separate administrative organizations established to deal with different branches of industry. It is quite logical in these countries to have an additional, separate branch consisting of employees of the national government.[9] In certain countries—Canada is an example—administration of the work injury coverage of national government employees may be delegated to the Provincial Workers' Compensation Boards.

FECA—a unique system

In the United States, we have chosen to have the Federal Government operate its own workers' compensation program without resort to private insurance, which is the dominant method of insuring employers against liability for work injuries in this country. Interestingly enough, when it comes to worker rehabilitation, the U.S. Department of Labor's Office of Workers' Compensation Programs, which administers the FECA program as well as the Longshore and Harbor Worker's Compensation Act and the Black Lung program, does not hesitate to use private sector rehabilitation providers.

It is possible to think of the FECA program as one of self-insurance, because the Government alone assumes the risk and funds the benefits. In that case, the claim can justly be made that it is one of the largest self-insurance work injury schemes in the country, with compensation and medical payments of about $1.6 billion per year. But it is equally plausible to conceive of the system as a separate agency, with the sole purpose of offering insurance to agencies and instrumentalities of the Federal Government. Viewed in this light, the FECA program is similar to the programs that exist in the six U.S. jurisdictions that have a single insurer to handle workers' compensation cases. As in these six States, the employers—in FECA's case, the governmental agencies—have no choice as to how they insure against potential liability. In fact, under

FECA, the employer's choice is even more limited. Some self-insurance is allowed for other financially responsible employers in the six States, but not for the agencies of the Federal Government. This lack of choice obviously has efficiency implications from the employer's or agency's point of view.

In terms of the more traditional measures of efficiency, administrative costs as a percentage of benefits or some similar measures, we can compare the FECA program with the six "exclusive fund" States. (See table 1.) The FECA agency budget per million covered workers is in line with estimates for the six State programs, and the number of staff members per million covered workers is low. FECA has fewer than 300 staff members per million covered workers, the lowest "administrative-resource-to-burden" ratio among the seven plans. However, it should be noted that the Federal workers represent a different industrial and occupational mix from that found in private industry in these States. The Federal Government has a much higher percentage of clerical and office employees, a job classification with a lower accident record than industrial workers. Of course, certain agencies, such as the Postal Service, the Veterans Administration, and the Department of Defense, do have a wider mix of employees, and hence higher risks of work-related injuries.

What about these considerations from the Federal employee's point of view? The employee may feel that he or she faces an administrative agency too large for the individual to challenge successfully. If there is some question about whether a worker is entitled to a particular benefit, he or she may have little incentive to pursue the matter by hiring an attorney, in that contingency arrangements for payment of attorneys' fees are discouraged by the law, and no provisions are made for agency payment of attorneys' fees for successful litigants.

FECA similar to some foreign plans

All of the above characteristics tend to make the FECA administering agency a unique entity among U.S. social insurance agencies. It operates as a monopolistic insurer in a largely nonadversarial environment—a position that the private sector compensation insurer must look upon with envy. However, it is not a position that is unusual in other nations. This is because few countries tend to be as litigious as the United States, and because it is more common abroad for the government to act as its own insurer in social welfare matters.

In the Netherlands, with its integrated social programs, and in Germany and Austria, which have distinct work injury programs, responsibility for administration rests with the social partners—employers and workers—organized into associations within individual industries or sectors of the economy. These associations administer work injury programs within rather strict government guidelines.[10]

Several of the countries have centralized systems that leave benefits determination in the hands of the national government agency. In Israel, for example, the general disability benefits scheme is part of the social security system, wherein decisions about benefit eligibility and the extent of disability are made centrally. The rehabilitation system is integrated with the benefits system, with referrals of workers to rehabilitation centers being made at the time of the benefits determination. In Israel, the work injury program is administered in the same manner and by the same social insurance organization as are disability and old-age insurance.[11]

We would expect centralized administration to be the rule for those systems (such as that in Sweden) that do not distinguish between the national disability benefit and the benefits that may be due because of a disability caused by a work injury. But, several of the European systems are beginning to reexamine how their programs operate. The search is on for ways and means to contain ever-rising costs without seriously disrupting the program objectives. In this respect, the U.S. system is being examined as a possible model. What distinguishes the U.S. social welfare system from those of most other nations is its tendency to rely on market-type incentives. In the field of workers' compensa-

Table 1. **Administrative-resource-to-burden ratios for the Federal Employees' Compensation Act program and for six "exclusive fund" State programs**

Program	Number of staff members		Agency budget	
	Per million covered workers	Per thousand first reports of injury	Per million covered workers	Per thousand first reports of injury
Nevada	1,802.9	11.30	$82,326.03	$ 518.57
North Dakota	382.6	3.98	18,465.40	192.42
Ohio	578.9	6.01	17,382.02	1,803.20
Washington	773.4	6.58	37,256.10	317.20
West Virginia	746.6	6.03	26,404.60	2,133.77
Wyoming	433.3	3.25	18,333.30	137.41
Federal Employees' Compensation Act program	296.0	4.94	17,495.00	302.70

SOURCE: *John Burton's Workers' Compensation Monitor*, September/October 1989; and U.S. Department of Labor, Federal Employees' Compensation Act, unpublished reports. The data, derived from *State Workers' Compensation Administration Profiles* (U.S. Department of Labor, Employment Standards Administration, October 1988), are for the latest year available for the various programs.

tion, this has meant that employers must rely on private sector insurance markets to insure their liability, within the confines of a highly developed system of experience rating whereby the records of individual firms influence the amounts they pay for insurance. Under such a system, any effort on the employers' part to reduce the costs of accidents is reflected in the premiums they pay the insurers.

Rehabilitation as cost reduction

FECA does have the advantage of maintaining control over the claims process.

Investing in workplace safety measures is a major means of reducing the costs of job-related accidents. Obviously, the accident that never happens is the cheapest to deal with. But once an accident happens, there still are possibilities for work injury program savings.

The basic rationale for expending funds on rehabilitation is that rehabilitation will save program funds in the long run. This is not to deny the humanitarian objectives of a rehabilitation program, because, for most individuals, return to work must be preferable to benefit status. But, traditionally, a work injury program has spent money on rehabilitation services with the expectation that these expenditures will result in future savings to the program. To put the matter in another way, the expectation is that the rehabilitation program ultimately will be cost effective. Determining whether that is, in fact, the case involves examining the costs and benefits of the program, matters that have remained largely unexplored in the FECA system.

Whatever the disadvantages of FECA's status as a monopolistic insurer, or as a self-insurer, it does have the advantage of maintaining control over the claims process. Operating at the district office level, the claims staff has a great deal of discretion. It is the claims examiner who authorizes medical services. Vocational rehabilitation services are authorized and supervised by the rehabilitation specialist, who may oversee the work of another professional such as a nurse or a rehabilitation counselor who usually will be drawn from the private sector.

A system of rehabilitation does not exist in a vacuum. All of the actors—employer, employee, and insurer—are influenced by the incentives facing them. The employee will be influenced by the level of benefits in relationship to the wage that might be earned by returning to work, and the employer by how the costs of the system are shared. Under FECA, the employee, once injured, is guaranteed continuation of full pay for the first 45 days, and then either 66-2/3 percent of wages or salary, or 75 percent if the employee has dependents. Because the cash benefit is not taxable, and because a worker off the job incurs no occupational expenses, it is likely that, for a worker with dependents, take-home pay is greater while in benefit status than when working. Such an employee has a rather sharp disincentive to return to work, thus complicating the task of rehabilitation. These disincentives are present in the work injury programs of other countries as well, and have contributed to the rising costs of these systems, especially in Europe.

The task of rehabilitation will be easier if the employer has some incentive to put the injured employee back to work. If we define the typical employer under FECA as the governmental agency, it is apparent that the insurer, FECA, has little authority to compel the employer to take back the injured worker. Admittedly, the agency does have financial incentives, although these may operate in a somewhat delayed fashion.

The costs to the system are immediately apparent in the continuation of pay for the first 45 days that the employee is away from work. Beyond that period, the Federal employer is charged the full cost of the benefits, but it is some time before the effects of the charges are felt. At the end of June of each year, the FECA program bills the agencies for their portion of the preceding year's payments. The agencies include the amount in their 2-years-out budget. Thus, the bill sent an agency in June 1991 will be part of its fiscal 1993 budget. (Exceptions are the Postal Service, which pays in the same fiscal year as billed, and the Tennessee Valley Authority, which pays in the same or the next fiscal year.) The delay of payment in the case of the typical agency, plus the fact that the governmental agency does not operate on a for-profit basis, serves to dull, but not obliterate, the financial incentives for Federal entities to cooperate in a rehabilitation program.

But foreign countries do not do as well in using financial incentives in their work injury programs. Spain does use a system of private insurance and France, while eschewing the private insurance market, does charge employers differential rates according to the injury experience of their industry classification. On the other hand, Austria has a flat rate for all employers, a practice followed in England, Holland, and Sweden, which have folded work injury programs into their larger workers' compensation systems. But this all may now be changing. As these countries seek to control costs, they are actively considering how to stimulate employer efforts to prevent injuries and illnesses and to minimize their costs.

The selection of clients

In the case of many foreign countries, and in most of the State programs, the workers' com-

pensation agency acts as a monitor, policing the rehabilitation program which is administered by the employer, the insurer, or the trade association. In such situations, the monitoring agency may choose whether to intervene in the rehabilitation process. That is the case in Belgium, where the Rehabilitation Fund operates quite independently of any of the other benefit programs. In the United States, several of the State workers' compensation programs, most notably New Jersey's, operate without any substantial involvement with the rehabilitation process. This is not to say that a great deal of rehabilitation does not take place in New Jersey, merely that the workers' compensation agency does not get involved in the process.

In other cases, the workers' compensation agency may adopt rules to compel the work injury insurer to screen selected cases for rehabilitation referral, to evaluate the screened candidates, and to develop and carry out rehabilitation plans where indicated. There is a bewildering variety of these arrangements, including some in which the workers' compensation agency itself provides rehabilitation services.[12]

In FECA's case, where the administering agency is also the insurer of liability, whatever rehabilitation takes place depends on the initiative of FECA. The agency is quite active in the rehabilitation area and has built its rehabilitation procedures into the claims handling process.

FECA does not use any automatic screening procedure whereby all cases in which time lost from work exceeds a particular number of days—say, 60 days, 90 days, or, as in the case of the State of Maine, 120 days—are examined for rehabilitation potential. Instead, the claims examiner who is authorizing payments, medical treatment, and the like is also charged with referring cases to the rehabilitation specialist. Referrals also might be initiated by the worker or by the employing Federal agency. Once a case is referred, it is reviewed by the rehabilitation specialist or by a private sector counselor. At this point, the reviewer may call the client for a personal interview. If it appears that the client is not going to be able to return to the former employer, but is fit for some work, the case may be opened. Referral would then be made to either the State vocational rehabilitation agency, or more usually, to a private sector rehabilitation counselor.

When it comes to rehabilitation program design, FECA has adopted a philosophy that is in accordance with the latest thinking in both the United States and abroad. In contrast to practice in an earlier era, when workers' compensation cases were referred to the State vocational rehabilitation agency and treated as any other rehabilitation case, FECA procedures recognize the unique nature of the work injury cases. The traditional approach was to analyze all of the worker's physical and emotional problems and to prescribe treatment designed to restore the worker to the highest level of function possible. In contrast, the current workers' compensation approach is to remedy the effects of the work injury and to restore the worker to employment with a minimum of services.

The practical effect of this philosophy is to order the objectives of the rehabilitation program according to some priority. The first objective is to get the worker back to the old job with the former employer. Only if that is not possible are efforts made to restore the injured worker to the same employer, but in some modified job more suited to the worker's residual functioning capacities. Resort to a retraining or educational program is the lowest priority, used when all else fails. Under this basic philosophy, it is not the job of rehabilitation to remake the worker, but to restore the employee to a job at minimum cost. That type of philosophy has been incorporated in the rehabilitation programs in Ontario, the Federal program in Australia, and in many of this country's State programs. It is a concept that builds on whatever obligations, legal or otherwise, that the employer has to retain the injured worker. In the U.S. Federal Government, this is a strong obligation, because the employee has an absolute right to return to the job within 1 year of leaving it.

In many ways, the FECA program is a fine one, involving screening of candidates, provision of professional services, and strong obligations of the employer to take the worker back. However, we cannot ignore the possible obstacles to return to work, including the high level of benefits in comparison to potential wages and the somewhat ambiguous relationship between FECA and the Federal agencies it serves. FECA has no real authority to compel a governmental agency to institute a system of modified work, yet the Federal agencies cannot choose to have a program other than FECA administer the system of workers' compensation benefits for their employees. Despite the suggestion of relative program efficiency apparent in table 1, it would seem important under these circumstances to have more, and more concrete, information about how well the program works.

FECA procedures recognize the unique nature of the work injury cases.

More data needed

The FECA program has the potential to be a model rehabilitation program, one that could set an example for State programs and for programs abroad, in terms of providing needed services at

minimum cost. The United States borrowed the entire concept of a workers' compensation program from Europe, but gave the program a distinct American emphasis by incorporating a system of private insurance and experience rating of individual firms. Today, when the virtues of a market system are being explored in formerly socialist countries throughout the world, the U.S. economic system is emerging as a model. An integral part of that system is social insurance, including workers' compensation.

The FECA program is not perfect, however. At present, it operates in a protected market where its customers, the Federal agencies, have no choice except to insure their obligations in the work injury area with FECA. Not only does FECA operate without competition, it has few constraints on what it charges the Federal agencies, passing on its costs plus, in some cases, an administrative fee based on a pro rata share of administrative cost.

This being the case, certain changes in information gathering and other operations could ensure the program's role as international pacesetter:

- The FECA program produces little in the way of information that would allow direct evaluation of the program or measurement of its efficiency. At a minimum, program analysts might consider generating a set of program statistics, including the number of first reports of injuries, the number of these cases that become lost worktime cases, the payments made during the year for these cases, and their method of closure. Resources permitting, each year's cases should be tracked individually for a period of several years.
- The program should report to each Federal agency the cost of the injuries arising in that agency. The present charge-back provisions do not quite do that, because the amounts charged back are confined to actual payments during a given year plus the client agency's share of administrative costs. If FECA is to properly evaluate how much to spend on a rehabilitation case, or the benefits gained by the return of a person to work, it needs more than data on the yearly cost of a case. It needs to estimate, in the same manner as does an insurance company when it reserves funds for a case, the amounts that will eventually be paid on a case.
- In the same vein, FECA might eliminate the lag in the way Federal agencies are now charged for their compensation costs by estimating in advance what the charges will be and giving the agencies some incentive for doing better than the estimated charges.
- Most important, FECA should begin to accumulate, through its rehabilitation tracking system, solid information about the costs and benefits of the rehabilitation program. With such information, a management information system could be devised that would routinely produce data to help managers improve their choice of persons to whom to offer rehabilitation and to shed light on the efficacy of the various approaches to getting persons back to work.
- Finally, FECA rehabilitation operates under a system that pays the most generous benefits of any of the workers' compensation programs in the United States, and perhaps in the world. The question is whether such high levels of wage replacement are counterproductive, in that they encourage persons to stay out of work. Here again, analysis of comparative data on durations of absences due to particular injuries and the incidence of return to work after rehabilitation should shed some light on whether these high compensation rates are truly disincentives. □

Footnotes

[1] *International Herald Tribune*, May 30, 1991, p. 11. The most thorough examination of the Dutch disability system, including an analysis of the disincentives, is contained in Leo J.M. AArts and Philip R. DeJong, "Economic Aspects of Disability Behavior," doc. diss. (University of Rotterdam, 1990).

[2] "Edges Fray on Volvo's Brave New World," *The New York Times*, Business Section, July 7, 1991, p. 5. An earlier examination of disability policy in seven countries is found in Robert H. Haveman and others, *Public Policy Toward Disabled Workers* (Ithaca, NY, Cornell University Press, 1984).

[3] Ontario's changes are reported in *Rapport*, a publication of the province's Workers' Compensation Board. See particularly vol. 11, no. 1, 1989. U.S. legislation is summarized in twice-yearly publications of the U.S. Department of Labor. See, for example, *State Workers' Compensation Laws* (Employment Standards Administration, January 1991).

[4] Monroe Berkowitz and John Burton, Jr., "Objectives Other Than Income Maintenance for Workmen's Compensation," *The Journal of Risk and Insurance*, September 1971, pp. 343–55.

[5] *Social Security Programs Throughout the World—1989*, Research Report no. 62 (U.S. Department of Health and Human Services, Social Security Administration, Office of International Policy, Office of Research and Statistics, May 1990).

[6] H.M. Somers and A.R. Somers, *Workmen's Compensation* (New York, John M. Wiley and Sons, Inc., 1954), p. 30.

[7] Edward D. Berkowitz, *Disabled Policy* (Cambridge University Press, 1987), ch. 1.

[8] COMCARE, the Commission for the Safety, Rehabilitation and Compensation of Commonwealth Employees, is a statutory authority operating under its own legislation, the Commonwealth Employees' Rehabilitation and Compensation Act of 1988. Its operations are detailed in internal publications. See, for example, "Comcare Overview" (COMCARE, 1990).

[9] Details of the relationships between benefit programs and rehabilitation schemes in six countries (France, Germany, Belgium, Sweden, the Netherlands, and Israel) are explored in Monroe Berkowitz, ed., *Forging Linkages* (New York, Rehabilitation International, 1990).

[10] See, for example, David Dean, "Vocational Rehabilitation Innovations for Disabled Persons within the Federal Republic of Germany"; and Ad Bockting and Tjeerd Hulsman, "The Link Between Disability Assessment and Rehabilitation: The System in the Netherlands," both in Berkowitz, ed., *Forging Linkages*, pp. 43–66 and 95–120.

[11] Emanuel Chigier, "The Work of the Rehabilitation Department of the National Insurance Institute in Israel," in Berkowitz, ed., *Forging Linkages*, pp. 157–80.

[12] The details of some of these arrangements are discussed in Monroe Berkowitz and Edward Berkowitz, "Rehabilitation in the Work Injury Program," *Rehabilitation Counseling Bulletin*, March 1991, pp. 182–96; and Monroe Berkowitz, "Should Rehabilitation Be Mandatory in Workers' Compensation Programs?" *Journal of Disability Policy Studies*, Spring 1990, pp. 63–80.

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