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Workmen's Compensations

BY
J. PRESTON JONES



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PREFACE

The purpose of this bulletin is to furnish fundamental facts and general information on Workmen's Compensation, its underlying principles, the history of its development, some comparative details of its provisions in the various states of the United States, and the law as it is in Arizona.

The mining industry is Arizona's leading "hazardous" occupation and this fact has been kept in mind in considering the law of this state.

Rather than force upon the reader any definite conclusions or specific recommendations, it is the intention to allow the reader to arrive at his own decisions after studying the comparative data herein outlined.

J. PRESTON JONES.

University of Arizona,
Tucson.
May, 1916.

PART I.

GENERAL

"Workmen's Compensation" is a term applied to that system by which an employer pays a specific compensation to an employee injured, or to the dependents of an employee killed, while actually in his service.

The injuries compensated, the industries covered, the persons compensated, the exact compensations in case of death, the exact compensations in cases of disability, the revision of benefits, the matter of insurance, the security of payments, the settlement of disputes, and other details of this method of adjustment, are prescribed by special statutory enactments commonly designated as *"Workmen's Compensation Acts."*

Theory of Workmen's Compensation.

There are certain hazardous occupations involving their workmen in a risk which is inherent in the nature of the employment. In spite of every care exercised by the employer, and in spite of every precaution taken by the workmen, accidents are at times unavoidable.

The essential principle underlying workmen's compensation acts is that the doctrine of "fault" is unfair and unsound, and consequently should be abandoned in favor of a system which will afford each industrial workman injured some measure of relief from his suffering and inability to earn wages, and in case of his death, some compensation for the support of his dependents. In this way he becomes, as it were, a pensioner of the industry which maimed him.

It is contended that each industry should bear the burden of its personal accident losses in the same manner in which it bears the burden of accident losses to plant and to machinery.

The expense of the compensation is placed upon the employer because he is the only one who can act as the agent in adding the cost of workmen's compensation for accidents to the other costs of production. This is the most simple and the most direct way of accomplishing the result. It is assumed that the employer will in turn shift the burden of the expense—that he will reimburse himself for this expense as for his other expenses of production in the prices he receives for his product. Experience seems to justify this assumption. Though originally opposed by employers as unduly burdensome, the new policies are now accepted by them as fair and reasonable. No country that has made the change has rescinded from it.

General Development.

To fully appreciate this newly created relation between employer and employee, one must briefly review its development.

Before the passage of special legislation defining specifically the liability of the employer for accidents to or the death of workmen all adjustments between employer and employee were based on the Common Law. Under this law, an employer is liable where the accident is caused by his negligence, and under no other circumstances. It is assumed that an employer's only duty is to use reasonable care for the safety of the employee while he is performing his work. This "reasonable care for the safety of his employee" is usually considered to include (1) the providing of a reasonably safe place in which to work; (2) the furnishing of reasonably safe tools and appliances; (3) the exercise of reasonable care in the

hiring of agents and servants who are fit for the work which they are to do; and (4) the providing of suitable rules for carrying on the work. The "chance" is taken by the employee when he accepts a position. If an employee is injured and it can be *proven* that such injury was due to the failure of the employer in any of these duties, then he may recover full compensation, the amount of which is determined by a jury trial, conducted under usual legal procedure.

From this outline, it is quite self-evident that under the Common Law the "burden of proof" rests upon the employee. To secure compensation he must bring suit and prove to a jury that his employer failed in his recognized duty to exercise reasonable care for the safety of his employee—that the injury was caused by his negligence.

Those upholding the interests of the employee claim that because of the expense of law suits, because of the great fighting ability of corporations from a financial standpoint, and because of immense attorney's fees, the workman rarely ever secures any material compensation.

Those championing the cause of the employer contend that the ordinary jury is prejudiced against corporations and consequently tends to discriminate in favor of the workman.

From these two suggestions one can readily conclude that the desirability of settling injury claims under the Common Law is a mooted question.

Next, and probably as somewhat of an advance, came what is known as Employer's Liability. One effect of this legislation was to destroy the defence of "common employment." The substance of this defence was that an employee injured at the hands of a fellow-workman could not bring suit for damages against the employer. The Employer's Liability Acts placed an employee, in certain cases, in the position of a stranger, making the employer liable for negligence of his servants notwithstanding the fact that they were in common employment with the servant injured. The employer still could make a plea of contributory negligence; that is, the plea that the employee contributed to the injury through his own negligence. This step did not, however, afford a real solution for the problem of just settlements for injuries and deaths of workmen.

The industrial world felt the need of some method of adjustment where responsibility was definitely placed, where reasonable amounts of compensation were determined upon, and where an injured employee, or his family in case of his death, could be sure of receiving some relief without tedious and costly procedure through the courts.

Consequently, nations the world over struggled diligently with the question, and a sincere desire for real justice has been rewarded by

the conception of what seems to be a fair method of compensation adjustment, from both employer's and employee's standpoints.

A fundamental idea closely related to workmen's compensation was put into practice as early as 1855, when, under the influence of Bismarck, Germany's industries began to establish accident and sickness insurance funds for their workmen.

Soon the old principle of negligence was discarded and in its place a system was adopted which provides for indemnity almost entirely without regard to the fault of either the employer or the employee.

More than twenty years ago England passed her first workmen's compensation act, which provided that in hazardous occupations employers should pay damages for accidents, regardless of negligence.

Today practically every nation of the world, and notably the great industrial states of Europe, have forsaken the old policy of providing compensation to a workmen only in case of fault on the part of the employer, and in its place they have adopted the policy of requiring employers to indemnify all employees who are injured in their service, irrespective of the cause of the injury, provided, of course, that the employee did not wilfully bring the injury upon himself.

Development in the United States.

In the United States thirty-one out of our forty-eight states have adopted workmen's compensation acts. Their adoption, however, has been of more or less recent occurrence.

The movement for improved legislation in this direction began in 1902, when Maryland enacted her first compensation law. This act related only to coal mines. It was immediately declared unconstitutional.

In 1909 Montana passed a similar law. It survived for the short period of two years, and was then declared unconstitutional.

In the hope of finding a solution for the problem, the states began to adopt the method of appointing commissions to make a study of workmen's compensation in the countries of Europe. In 1909 New York and Wisconsin commissions were engaged in this work and as a result these states enacted compensation laws. In New York, the compulsory act of 1910 was declared unconstitutional on the first case tried under it (*Ives vs. Southern Buffalo Ry. Co.*) in March, 1911. The court expressed the opinion that "the act provided substantial justice but not sound law."

The enactment of solid compensation laws began in March, 1911. On the 14th day of this month both Kansas and Washington passed their acts. In 1911, nine states succeeded in enacting compensation laws; in 1912, three; in 1913, nine; in 1914, two; in 1915, eight.

The most recent enactment is that of Pennsylvania, on June 2, 1915, the law going into effect January 1, 1916.

Many of the states which do not have workmen's compensation acts have at least appointed commissions to investigate the matter and to make recommendations for legislation.

The Constitutional Obstacle.

As has been stated, progress in the enactment of compensation acts in the United States was greatly retarded by the objection that such measures were unconstitutional. The New York Court of Appeals held that requiring an employer to pay compensation where accidents or deaths were not due to his negligence was "taking his property without due process of law." This interpretation of "due process" has not, however, been the same in all of the states. In 1911, the Washington court took a directly opposite view from the New York court. Many of the states have overcome this constitutional objection by removing certain technical defences which employers had hitherto used in damage suits and then establishing compensation acts, allowing the employers to "elect" to come under this new system, which, in fact, offers them many advantages. Ohio and California amended their constitutions for the special purpose of allowing the enactment of binding compensation laws. Through favorable court decisions and the amending of constitutions, the states are now getting their systems on solid, constitutional foundations.

BRIEF DIGEST OF THE WORKMEN'S COMPENSATION ACTS OF THE VARIOUS STATES OF THE UNITED STATES.

Industries Covered.

The industries covered by the acts of the majority of the states are designated as "dangerous" or "especially dangerous," or "inherently hazardous works and occupations," etc. Many of the laws specifically designate those industries or employments which are considered dangerous and which come under the act.

In Colorado and some other states, interstate commerce business is exempted, while most of the laws exclude agricultural and domestic occupations from the list. Some states provide that a certain number of men must be employed, usually about five as a minimum. Connecticut provides for "all industries in which five or more persons are employed, in the absence of contrary election by the employer."

Illinois applies the act to all enterprises in which the law requires

protective devices, provided the employer elects. Other employers *may* elect.

New Jersey makes the law applicable to all employments *in the absence of* contrary election; while Massachusetts applies the law to all industries, *when* the employer so elects.

The Colorado, Illinois and many other acts, include public service, both state and municipal.

Texas requires the employer to subscribe to the state insurance fund, in order to come under the act.

Injuries Compensated.

In the matter of injuries compensated, there is a great deal of similarity in the laws of the various states. They are practically uniform in providing compensation for all accidental injuries causing disability or death "arising out of and in the course of the employment."

Oklahoma is the only state whose law does not provide compensation for deaths. In Louisiana, death must occur within one year after the date of the injury; in Colorado, and several other states, death must occur within two years; in Pennsylvania, within three hundred weeks. Many of the states, however, set no limit on the time within which death must take place in order that dependents may receive compensation under the act.

The period of time during which a workman must be disabled on account of his injury before he is entitled to receive compensation, varies. In Illinois, the injury must cause disability of over six working days; in Texas, at least one week; in Connecticut, more than ten days. Arizona and many other states provide for at least two weeks, while Indiana and fourteen others require that the disability must be of *more* than two weeks duration.

Practically every state denies an employee the right to receive compensation if he intentionally inflicted the injury upon himself. Other states exempt the employer if the workman's accident was due to his own wilfull misconduct. In the Indiana, as well as in several other laws, there is a provision which deprives a workman of his right to receive compensation if he wilfully refused to use safety devices or to perform certain duties required by statute.

California and many of the other acts have clauses which deny compensation to a workman who is injured as a result of intoxication. The Maine law, however, provides that if the habit was known to the employer, the injured workman is still entitled to compensation.

Persons Compensated.

The acts are practically uniform in the provision that compensation shall be made to "all employees in the industries covered." A large majority, however, exclude casual workmen.

Maryland excludes casual workmen and those receiving wages of more than \$2,000.00 a year.

Many of the laws have definite clauses including aliens. However, New Jersey provides that non-resident alien beneficiaries shall receive no benefits.

Most of the states apply the act to public employees, excluding, however, elective officials.

Compensation for Disability.

Practically all of the acts provide medical, surgical and hospital aid, the same varying in amounts and length of time. The shortest period is in Texas, whose law provides medical care for the first week of the injury. The Nevada act states that the employer shall furnish "reasonable" medical, surgical and hospital aid for not more than four months. The Nebraska period is twenty-one days; Colorado, thirty days; California, ninety days, with a provision that this period may be extended if the commission so directs; Illinois, eight weeks. Iowa, Maine, Pennsylvania, in fact, the majority of the acts state that two weeks shall be the period during which these services shall be afforded the injured workman.

With regard to the maximum cost of these services, New York places no definite limits, merely providing that the costs shall be approved by the commission. The Pennsylvania law says that the cost shall not exceed \$25, unless a major surgical operation is necessary, in which case \$75 is the maximum. In Maine, these expenses may not exceed \$30, unless by agreement or order of the commission a larger amount is provided for. Oregon has a high maximum. Its law provides "transportation, medical, surgical and hospital expenses not exceeding \$250." The West Virginia law sets an ordinary limit of \$150, but provides that in special cases the amount may be as high as \$300. The average amount is \$100.

Most of the acts divide disability into: (a) total temporary disability; (b) total permanent disability; (c) partial disability.

For certain specified injuries, such as permanent disfigurements, mutilations, the loss of an eye, an ear, a hand, etc., definite compensations are provided in most of the states.

For total disabilities, both temporary and permanent, a certain percentage of the weekly wage is paid during a specified time. In both cases the percentage is usually the same, the length of time, how-

ever, being increased in case of total permanent disability. There is usually a minimum and a maximum amount for the weekly payments, and many of the laws set a maximum of total amount to be paid.

For total disability the average percentage of weekly wages is 50%. California provides 65%. Ohio's act allows 66 2-3% of weekly wages during total temporary disability, in amount from \$5 to \$12 per week, but for not longer than six years nor more than \$3750. The New York law is very liberal, stating that 66 2-3% of wages shall be paid during the continuance of disability. The Wisconsin law provides for 65%, but adds a clause that if the injured person requires a nurse, then 100% of the wages shall be paid during the first ninety days.

The total amount limits vary. The Indiana law simply provides that the total amount shall be limited as for death benefits, and this is practically the spirit of all the acts. Probably the most liberal are those of Maryland and Nevada, whose amounts are \$5000.

In the matter of total number of weeks during which payments are made, the average for total temporary disability is about 300 to 350 weeks, and for total permanent disability about 500 weeks.

For partial disability, the average amount paid is 50% of the wage loss during an average period of 300 weeks, the average weekly payments ranging from \$4 to \$10.

Practically all acts provide that lump sum payments may be substituted after certain periods have passed. In some states this substitution must be approved by Industrial Commissions or the courts.

Compensation for Death.

Of all states having workmen's compensation acts, only one makes no compensation in case of death. The Oklahoma law does not cover fatal injuries.

If the employee leaves no dependents, the employer, under the laws of all of the states, pays the expenses of the last sickness and also the funeral expenses, ranging in total amount from \$50 in Wyoming, to \$200 in Maine, Massachusetts and several other states. The average amount is \$100. The Nebraska law provides that *in addition* to other benefits, a reasonable amount, not exceeding \$100, to cover expenses of last sickness and burial, shall be paid.

Most of the states divide dependents into two classes—those wholly dependent and those partially dependent.

Those wholly dependent ordinarily include widows or invalid widowers, and minor children.

Different bases are used for the computation of amounts of compensation to which dependents are entitled.

In some states a certain multiple of the annual earnings is paid. In California, a sum equal to three times one year's wages is paid; in Kansas, three times; in Illinois, four times, etc., with, of course, a specific maximum.

In most states, however, the amount paid is a certain percentage of the weekly wages over a certain number of weeks. For example, in Colorado, 50% of the weekly wages is paid for six years. The maximum weekly amount is \$8 and the total may not exceed \$2500, nor shall it be less than \$1000. In Connecticut, 50% of the weekly earnings for a period of 372 weeks is allowed, with a minimum of \$5 per week and a maximum of \$10.

Some states have a graduated scale of percentages, depending upon the size of the family. For instance—in Louisiana: To a widow alone, 25% of the weekly wages; 40% if there is one child; 50% if there are two or more. If there is one child alone, 25%; 40% for two, 50% for three or more. In no case may the total exceed 50% of the weekly wages. The minimum is \$3 per week and the maximum \$10 per week, for a period of not more than 300 weeks.

The number of weeks varies from 260 in Vermont to 500 in Massachusetts. The average number is 300 weeks, about six years.

The minimum and maximum total amounts are regulated by the acts. In California the range is from \$1000 to \$5000; in Illinois, from \$1650 to \$3500; in Kansas, from \$1200 to \$3600. The smallest minimum is about \$1000, while the largest maximum is \$6000, this amount being paid in Nevada in the case of a dependent widow and three or more minor children.

In most states payments to children cease when they reach the age of 18, unless they are physically incapacitated. Payments to widows or dependent widowers cease on death or remarriage. However, in Washington a widow receives a lump sum of \$240 if she remarries. In West Virginia, should a widow or an invalid widower remarry within two years of the death of the employee, they are paid 20% of the balance of ten years benefit.

In some states a distinction is made between resident and non-resident dependents. In Montana only one-half as much compensation is paid to a non-resident as to a resident dependent unless otherwise required by treaty.

Alien beneficiaries also come under separate rulings in certain states. The Kansas law prescribes that for non-resident alien beneficiaries (except in Canada) the maximum compensation is \$750, while Montana allows no compensation to non-resident alien dependents, unless required by treaty.

Partial-dependents are usually treated under separate clauses. The

California law provides that if only partial dependents survive, "such proportion of the amount paid to dependents as corresponds to the ratio between the earnings of the deceased and his contribution to their support" shall be paid to such partial dependents. That is, a partial-dependent is compensated according to the relative measure of his or her dependence. This is the rule in most of the states. Some, however, specifically prescribe a certain reduced scale.

Burden of Payment.

Practically every act provides that the burden of payment shall *all* be on the employer. West Virginia, however, places 90% on the employer and 10% on the employees.

Montana's law states that contributions may be made by employees for a hospital fund. The Nevada act provides that \$1 per month may be deducted from each employee's wages for medical expenses. Many other states have similar arrangements for hospital fees.

Oregon's law allows the employer to deduct one cent per day or part of a day from the employee's wages and the employer himself contributes according to a rate fixed by a commission for the various industries. The state gives a subsidy.

Security of Payments.

Insurance, as outlined below, is intended to secure the payments of compensations.

The general rule is that payments of compensations are preferred claims against the assets of the employer, the same as wage debts.

The Kansas law provides that lump sums awarded by the court may be secured, upon the order of the court, by "a good and sufficient bond."

The Iowa act, as well as practically all others, declares the claims exempt from creditors.

The Maryland law states that payments may not be assigned, nor are they subject to execution or attachment.

In a word, compensation payment claims are treated in general the same as wage debts.

Insurance.

The object of insurance is to afford relief to the employer and protection to the employee. The fact that insurance may be required does not lessen the employer's responsibility to the employee.

The spirit of the average act is well expressed in the substance of Pennsylvania's law, which provides that "employers must insure in the state fund, a stock or mutual company, or give proof of financial ability."

Some states specifically require a certain form of insurance. Nevada, Wyoming, and Washington compel the employer to insure in a State Fund. Oregon provides that "insurance is effected through the State Industrial Accident Fund under the supervision of the State Industrial Accident Commission."

In California municipalities are required to insure in the State Fund unless the risk is refused.

Most of the states allow the substitution of co-operative schemes by the employer and employee, pointing out, however, that the employer's responsibility is not abridged.

New Hampshire, Louisiana and New Jersey make no provision for insurance.

Settlement of Disputes.

The method of settlement of disputes used by the majority of the states is by reference to a commission, with limited rights of appeal to the courts.

In California the commission is known as the Industrial Accident Commission; in Colorado, the Industrial Commission; in Connecticut, Compensation Commissioners; in Pennsylvania, Compensation Board. The most common title is Industrial Commission.

As in Illinois, so in many of the other states, an appeal to a court is made only for a decision on points of law.

In Nevada, the matter is treated as an action in equity. In New Jersey, the settlement of disputes is handled by the Court of Common Pleas, subject to review as to questions of law by the Supreme Court. In Iowa, arbitration is the only method provided.

Revision of Benefits.

It is a general rule that benefits may be revised upon agreement of the parties. Either party may demand a review of the award within certain time limits. In Colorado this demand may be made after sixty days; in New Jersey and Minnesota after six months; in Kansas, Louisiana and other states, after one year; in Rhode Island and Maine within two years. The average is one year. In Massachusetts, however, the awards may be rescinded or amended at any time by the Industrial Accident Board for good cause. In most of the states where they have an Industrial Commission, the awards may be reviewed by the Commission at any time it deems fit.

Practically every act provides that the injured workman must submit to medical examination upon the request of the employer or at the instance of the State Commission. In New Hampshire these examinations cannot be made oftener than once a week. In Arizona

the intervals may not be less than three months. The Kansas law requires examinations at "reasonable" intervals. The Massachusetts law provides that the injured party must submit to such an examination when requested by the employer.

General.

The Canal Zone and Hawaii have compensation acts similar to those above outlined.

The United States government, on May 30, 1908, enacted a compensation law covering public employment in certain branches of its activities.

At the time of the writing of this bulletin a new general Federal Workmen's Compensation Act is before Congress.

Summary.

From the review of these features of the compensation acts of the various states, one can see that in fundamental principles and general provisions they are strikingly similar. Their differences lie chiefly in details of amounts, periods of time and routine of administration.

PART II.

ARIZONA.

Under the laws of the State of Arizona, a workman injured, or the dependents of a workman killed, in certain specified hazardous occupations may elect either to sue under the provisions of the Employers' Liability Act or to be compensated according to the provisions of the Workman's Compensation Act.

Employers' Liability Act.

This act was passed in accordance with the provisions of Section 7 of Article XVIII of the State Constitution.

It provides "that to protect the safety of employees in all hazardous occupations in mining, smelting, manufacturing, railroad, or street railway transportation, or any other industry, as provided in said Section 7 of Article XVIII of the State Constitution, any employer, whether individual, association, or corporation, shall be liable for the death or injury, caused by any accident due to a condition or conditions of such occupation, of any employee in the service of such employer in such hazardous occupation, in all cases in which such death or injury of such employee *shall not have been caused by the negligence of the employee killed or injured.*"

We can readily note the advantages this act offers to the workman in contrast to the remedies under the Common Law. Here the

workman needs only to prove that the accident was not caused by *his* negligence, while under the Common Law he was required to prove that the accident *was caused* by the negligence of the employer.

The *occupations* declared under this act to be hazardous include all "especially dangerous" employments, such as the construction, operation and maintenance of steam and street railroads; the use of, or the working near, explosives; building work using iron or steel frames or hoists, derricks, ladders or scaffolds twenty or more feet above ground; telephone, telegraph or other electrical work; work in mines, quarries, tunnels, subways, etc.; all work in mills, shops and factories using power machinery, etc.

The act requires the employer to adopt *rules and regulations* governing the duties and restrictions of the employment, for the sake of protecting the safety of the employees.

The employer is *liable to* the workman injured, or to the dependents of a workman killed, where the accident or the death was not caused by the employee's negligence.

The question of *contributory negligence or assumption of risk* is declared to be a question of fact and must be left to the jury. Even though the employee may have been guilty of contributory negligence this fact "shall not bar a recovery, but the damages shall be diminished by the jury in proportion to the amount of negligence attributable to such employee."

Any *contract to exempt* an employer from his liability is declared to be void.

"No action shall be maintained under this chapter unless commenced within *two years* from the day the cause of action occurred."

Workman's Compulsory Compensation Law.

This law was passed in accordance with the provision of Section 8 of Article XVIII of the State Constitution.

The first act was passed on June 8, 1912, and became effective September 1st of that year. On May 13, 1913, the act was revised, the revised law going into effect on October 1, 1913.

Digest of the Law.

Purpose. "This chapter is remedial in its purpose and shall be construed and applied so as to secure promptly and without burdensome expense to the workman the compensation herein provided and apportioned so as to provide support during the periods named for the loss of ability to earn full wages."

Public Policy. The law states that it is against *public policy* for an employer engaged in dangerous industries not to provide safety

for his workmen or to compensate injured workmen or the dependents of killed workmen.

Common Law Doctrine. "The *common law doctrine* of no liability without fault" is declared to be "*abrogated* in Arizona so far as it shall be sought to be applied to the accidents" mentioned in this act.

Industries Covered. The *occupations designated* as especially dangerous, within the meaning of this chapter are identical with those listed under the Employers' Liability Act, and are, in substance: "the construction, operation and maintenance of steam and street railroads; the use of, or working near, explosives; building work using iron and steel frames or hoists, derricks or ladders, or scaffolds twenty or more feet above ground; telephone, telegraph or other electrical work; work in mines, quarries, tunnels, subways, etc.; all work in mills, shops and factories using power machinery, etc."

Injuries Compensated. The act provides compensation for all personal injuries to an employee arising "out of, and in the course of" the employments specifically covered by the law, and, when death follows such injuries, then compensation for the benefit of the estate of the deceased.

Persons Compensated. The law provides that "compulsory compensation shall be paid by his employer to *any workman* engaged in any employment declared and determined * * * to be especially dangerous * * * if in the course of the employment of said employee personal injury thereto from any accident arising out of, and in the course of, such employment is caused in whole, or in part, or is contributed to, by a necessary risk or danger inherent in the nature thereof, or by failure of such employer * * * to exercise due care or to comply with any law affecting such employment."

The act further specifically states that "all workmen employed by an employer at manual and mechanical labor of the kinds defined" under the heading "Industries Covered," "shall be deemed and held in law to be employed and working subject to the provisions of this chapter."

In this clause we see still another advance over both the Common Law and the Employers' Liability Act in that the injured workman, or the dependents of the killed workman, do not have to prove lack of negligence on the part of the workman, it being sufficient if the accident resulted from a risk or danger "inherent in the nature of" the employment, regardless of "fault."

Election to Come Under the Act. An injured workman, desiring to come under this act, must, if able, *give notice within two weeks* after the day of the accident. This notice must state (1) name and address, (2) date and place of accident, (3) cause, (4) nature and degree of injury, (5) that compensation is claimed under this chapter. "No compensation shall be claimed or allowed so long as such notice is not given." Notice is not required if the workman is killed or "otherwise rendered incompetent to give notice, nor is notice required to be given by the representative of a deceased person."

If an employee or his personal representative so desires, he *may refuse to settle under this act*, and retain the right to sue. If, however, he elects to sue, he must pursue that course exclusively.

Employer and employee *may contract* not to come under the provisions of this chapter.

Other employments may accept and adopt the provisions of this chapter.

Waiting Period. In order to come under the benefits of this law the workman must be disabled for at least *two weeks*. The employer is not liable under the act should the employee refuse to settle under it and retain his right to sue.

Amounts of Compensation. The *measure and amount of* compensation to be made by the employer to an injured workman or his personal representative for injuries is as follows:

(1) Total Incapacity. "If the injury by accident does not result in death within *six months* from the date of the accident, but does produce or result in *total incapacity* of the workman * * * for more than *two weeks* after the accident, then the compensation to be made to such workman by his employer shall be a *semi-monthly payment*, commencing *from the date* of the accident and continuing during such total incapacity, of a sum equal to *fifty per centum* of the workman's *average semi-monthly earnings* * * *"

(2) Partial Incapacity. In case the accident only *partially incapacitates* the workman or in case the workman recovers from a total incapacity and is able to "engage at labor in some other gainful employment * * * then in each case the *amount of the semi-monthly payments* shall be *one-half of the difference* between the average earnings of the workman at the time of the accident * * * and the average amount he is earning, or is capable of earning, thereafter. * * * Such payments shall *cease* upon the workman recovering and earning, or being capable of earning * * * wages equal to the amount being paid at the time of the accident." In no case shall the *total amount* of such payments exceed four thousand dollars.

(3) For Death. When *death* results from the accident within *six months* thereafter, and the workman leaves dependents, "the employer shall pay to the personal representative of the deceased workman, for the exclusive benefit of such "dependents," a sum equal to *twenty-four hundred times one-half the daily wages* or earnings of the decedent * * * but in no event more than the sum of four thousand dollars." If the workman leaves *no dependents*, then the employer "shall pay the reasonable expenses of *medical attendance* * * * and also provide and secure his *burial* in a proper cemetery, which may be chosen by the friends of the decedent."

Burden of Payment. The law states that the "employer must make and pay compensation," thus placing upon him the entire burden of payment.

Security of Payments. A workman, or his representative, may bring action to enforce payments. Such action must be brought within one year after non-payment of any semi-monthly installment. A judgment rendered in this event may be paid in lump sum, or in installments upon the furnishing of security by the employer.

"In any action under this chapter, the court shall fix and allow * * * a reasonable *fee to the workman's attorney*, to be taxed against the employer as costs," not to exceed "twenty-five per centum of the principal of the sum recovered."

Workmen entitled to payments under this act shall have "the same *preferential claim* therefor as now is allowed by law for unpaid wages for personal services." Judgment or payments are not assignable or subject to mortgage, levy, execution, or attachment.

Settlement of Disputes. *Questions* arising between employer and workman, or his representative, shall be determined (1) by written agreement; (2) by arbitration, or (3) by reference and submission to the Attorney General of the State, and "in case of a refusal or failure * * * to agree upon a settlement by either of the modes above provided, then by a civil action at law."

Revision of Benefits. In view of the fact that the amount and duration of compensation payments depend upon the extent and duration of the injury, provision is made for physical examinations of the workman. The law provides that if requested by the employer, the injured workman must submit to *bodily examination* by some competent licensed medical practitioner or surgeon to ascertain and determine the nature, character, extent and effect of the injury. These examinations may not take place oftener than three months. If the

workman neglects or refuses to submit to an examination as specified, payments shall cease until he complies.

Discussion.

The discussion of this question is intended to be entirely unbiased. Its purpose is to give the views and arguments on both sides, leaving it to the reader to determine justice and needs for correction or improvement.

Employers. The employers in Arizona who are affected by this act appear to be strongly in favor of a "workman's compensation law." They recognize the fact that in these hazardous occupations accidents are bound to happen regardless of the exercise of utmost care by both employer and employee, and they are willing that workmen should be compensated. Furthermore, they realize that if an injured workman is properly taken care of, he will return to his work in a much better frame of mind and in a much better physical condition.

The employers, on the whole, seem satisfied with the general provisions of the present law. There is, however, one common complaint, namely, that the law is compulsory as regards the employer, but optional with the workman as to whether he shall elect to come under this act or retain his right to sue.

The employers feel that the act should be compulsory both ways, that there should be no question of litigation, that there should not be a chance of the compensation going to lawyers for fees rather than to the man who really needs it. For the sake of precedent, the average employer rejects the idea of being defeated in a law suit, while he is willing to settle in a reasonable way out of court.

But under Arizona's present Constitution, a law that was compulsory for both employer and employee would be unconstitutional. Article II, Section 31, of the Constitution of Arizona, states "No law shall be enacted in this state limiting the amount of damages to be recovered for causing the death or injury of any person." Furthermore, Article XVIII, Section 6, states that "the right of action to recover damages for injuries shall never be abrogated, and the amount recovered shall not be subject to any statutory limitation."

Consequently if the law were made compulsory on both sides the Constitution of the state would first have to be amended in these two respects.

Employee. The popularity of workmen's compensation acts and their decided success would seem to indicate that they are approved

of by the workingmen throughout the world. Arizona's law is very similar to, and quite as liberal as that of most of the states; consequently there is little question but that its principles will meet with success here.

There are some workmen who agree with the employers that the law should be compulsory for both. They believe, that if the law is fair at all, it is fair at all times, and that there should be a rigid rule which would fit the majority of cases. They believe that there should be no question—no squabbling. They dislike the idea of the possibility of a workman being "talked into" suing for a large, and perhaps an unreasonable amount, and then either losing the suit, or losing a large part of any recovered damages to his lawyer. If there were just one method of settlement, there would be no loss of time in adjustment.

Their idea is well expressed in a bulletin entitled "Standards for Workmen's Compensation Laws," issued by the American Association for Labor Legislation, of New York City, where the following statement appears: "One of the weightiest arguments against the present system of employers' liability is that it causes vast sums to be frittered away in law suits that should be used in caring for the victims of accidents. To avoid this waste, the compensation provided by the act should be **THE EXCLUSIVE REMEDY**. If the employer has been guilty of personal negligence, even going to the point of violating a safety statute, his punishment should be through a special action prosecuted by the state itself, not through a civil suit for damages carried on at the expense and risk of the injured employee."

"This is the law in Connecticut, Illinois, Iowa, Kansas, Louisiana, Massachusetts, Michigan, Minnesota, Nebraska, New Jersey, New York, Rhode Island, and Wisconsin, except that in a few of these states if the employer fails to insure the payment of compensation the injured workman has the option of claiming compensation or of suing at law with the defenses removed."

On the other hand, there are those who cling to the Common Law doctrine, where the person aggrieved has the choice of remedies, while the aggrieved does not. They feel that the employee should retain his right to sue—that it is a grip which he has on his employer. They maintain that if an employer knew himself to be immune from law suits for accidents and deaths and subject only to a certain specific compensation, he would "take a chance" and become more negligent regarding the safety of his plant and the welfare of his employees.

There is a tendency among the workmen in the mines of Arizona to elect the Workmen's Compensation Act for minor injuries, but to sue for more serious injuries, and where they believe they have a

good chance to win in a suit. There is some feeling that the maximum amount of the compensation for death is too low.

General. An important feature of the settlement for injuries is the feeling which afterwards exists between employer and employee. The ideal system would be the one which is unquestionably fair and sufficiently co-operative to leave a "good taste in the mouths" of both parties concerned.

While Arizona's law provides compensation for partial disability, still no definite compensation is named for certain specific mutilations or disfigurements, such as the loss of an eye, an ear, a finger, etc. Most states make this provision and it is suggested by some that Arizona's act should be amended in this regard.

On the whole, however, Arizona's law would seem to compare favorable with those of most of the other states of this country. Now that the law has been in operation for a few years, the most sane method to insure wise legislation for any readjustments would be the creation of a state commission, composed of a representative of labor, a representative of the employer, and, as chairman, an economist; this commission's duty would be to thoroughly investigate the industrial situation in the state; to make a thorough study of workmen's compensation, both at home and abroad; to review with great care our present workmen's compensation law; and to present to the legislature such recommendations as are needed to provide an absolutely solid, fair, workable workmen's compensation act.

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