



NATIONAL CONVERSATIONS ON THE FUTURE OF WORKERS' COMPENSATION

The following are the notes from the IAIABC National Conversation held on June 18, 2016 in Madison, Wisconsin.

DISCUSSION

1. What are the objectives of a workers' compensation system in 2016 and beyond?

Discussion on the objectives of workers' compensation at first centered on the objectives defined in the 1972 National Commission, but quickly broadened. Each group was asked to present one objective and during a break, the following objectives were presented to the group for voting. The voting results are noted:

- **Broad coverage for covered employees** (90% agreement)
- **Equitable benefits to employees at reasonable cost to employers.** (100% agreement)
There was discussion that equitable and reasonable needs clarification and a question on if these definitions should defer between states. Concern that the current situation is "I know it when I see it."
- **Define the mechanism for calculating and paying permanent partial disability.** (55% agreement)
Recognition that there is a lot of variance among states in how they compensate for permanent partial disability and participants were not sure it was realistic to be able to define a uniform or more consistent methodology.
- **Encourage safety** (99% agreement)
- **Adequate communication to all workers and employers and about their rights and responsibilities** (100% agreement)
Comment that this was a role that government could facilitate.
- **Focus on outcomes, to include return to work and medical care** (100% agreement)
- **Maintain exclusive remedy** (99% agreement)
- **Workers' compensation systems should be flexible and adaptable** (35% agreement)
- **Cover all working people** (35% agreement)

2. Has the grand bargain been breached since workers' compensation was first introduced in the United States?

Much of the discussion was around the state-by-state nature of workers' compensation and how the grand bargain could be in tact in some states but not others. Generally, they felt the grand bargain had not been breached in most of the Central states but in some states it had.

From a national level the system is not broken; however there was general consensus that the grand bargain was under siege and that it was close to being breached in many states. It is a constant struggle to maintain balance between labor and management.

Recognition that injuries and illnesses likely not considered at the beginning of workers' compensation have altered the grand bargain in favor of the employee.

Additional Notes:

- If your state wants to have the lowest rate that will most often result in benefit reductions/restriction of rights for injured workers.
- One attendee commented they thought that Minnesota had seen restrictions over the past thirty years that had negative impacts on injured workers. In the 80s there was a presumption of favor in the employee; in 95 caps were put into place to help retain the balance. Important to consider how benefits respond to inflation, if there are no raises the benefits based on CPI or inflation that means the value of benefits are decreasing.
- Grand bargain is not broken, it works well depending on the type of claim. The 80/20 rule applies.
- Opt-out may be moving away from the grand bargain.

3. What is the responsibility of employers with respect to occupational injuries and illnesses?

First and foremost, employers must comply with workers' compensation coverage requirements. In addition, employers have a responsibility to the greatest extent possible to prevent injuries and to educate their employees about safe practices and to enforce safety rules. Post injury they should support early return to work.

Employers have the responsibility of understanding workers' compensation and what to do if an incident occurs. If an injury occurs they need to communicate with all parties involved (i.e. employee, insurer, etc.) Considerable work needs to be done to educate/assist small employers.

Attendees wanted employers to treat people as people, not as a number or workers' compensation claimant. Value their employees and treat them with dignity. If they are hurt at work, reach out and talk with them, do not "just let the insurance company deal with it."

4. What is the responsibility of employees with respect to occupational injuries and illnesses?

Employees must understand and comply with employer safety policies and programs. They should also understand and know how to report an injury if one occurs. They need to take ownership of their claim and be informed about the process, policies, and procedures. Work to get back to work and be compliant with medical treatment.

5. What is the state's responsibility toward workers' compensation?

The state needs to provide a neutral forum for adjudication of disputes and enforce laws. They should also monitor the system for fairness. Additionally, a state aggregates, analyzes and distributes data on a variety of different functions within a state.

The state plays a role in educating their state's employers and injured workers. Suggestion that a state could have a "speaker's bureau" or pool of experts that could talk directly with employers interested in learning more about workers' compensation.

One attendee commented "Where do states tend to focus? We tend to focus most of the state's resources on the 20% of claims that are challenging."

Additional Notes:

- States struggle with how to deal with biased opinions of medical providers.
- Comment that the Oregon Rate Ranking survey can be difficult for states because there is constant pressure to have lower cost (nationally or than your neighbor, etc.) This sets up a negative incentive for states to reduce costs/benefits.
- Comment that a payer's responsibility is to pay what is owed. You might pay more upfront to get a claim handled but it can avoid a longer, more expensive claim.

6. What are successes in workers' compensation today?

Workers' compensation has had a positive impact on our economy; it has helped facilitate a robust economy and contributed to safer workplaces. Additionally, workers' compensation is a social insurance system that is fully funded and pays benefits. In general, work comp pays reasonable benefits at reasonable rates. Total reported injuries are decreasing. Stability in many state systems.

Overtime, workers' compensation has developed efficiencies; there is more automation, less paperwork. Implementation of fee schedules has decreased disagreement, friction in the system. Discussion about litigation rates and what is the definition of "low litigation. (Suggestion is 10%) Some states have low litigation rates.

Advancements in medical care and technology are helping to improve outcomes for injured workers. Additionally, employers have more tools/information to accommodate injured workers to support stay-at-work/return-to-work.

7. What are the most serious challenges for workers' compensation today?

One theme echoed throughout the discussion was the need for funding and capable staff to administer regulatory agencies. Many agencies face staff turnover, recruitment, and retention challenges. It is hard to compete with the private industry with wages and benefits. Workers' compensation is a complex business and it requires a significant investment to train/educate new personnel.

Comment that there is continued pressure to see costs continue downward; at what point is too low? Employers continue to perceive the cost of the system as too high which may push them to have an interest in opt-out. The system will not be able to sustain an increase in injury rates. There may be a mis-alignment in how we measure system success; is there an opportunity to redefine success beyond cost?

The economy and its changes to employment including the sharing economy, conflicting definitions of employer and independent contractor, and if there are lasting impacts from the recession. Changing work environment and work place.

Other concerns mention include:

- Maintenance of fee schedules and the cost of medical care
- Political differences across states
- Federalization
- Obamacare and cost-shifting to workers' compensation
- Changes in medical care and delivery including opioids, evidence based medicine, telemedicine, wearables
- Erosion of benefits
- Lack of understanding outside of the industry of the grand bargain

ATTENDEES

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