

The politics of workers' compensation



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Providing compensation to workers injured on the job is a political decision, with roots that go back to some of the earliest civilizations. The Code of Ur-Nammu, written between 2100 and 2000 B.C., is one of the earliest known texts related to compensation for a workplace injury—it prescribed specific amounts to be paid based on the anatomic location of an injury.

The Code of Hammurabi, a Babylonian code of law of ancient Mesopotamia that dates to about 1754 B.C., ordered injury compensation

based on the type and severity of an injury. Both ancient codes were political decisions by powerful rulers. Neither was perfect. There were different compensation rates for nobles, workers and slaves.

In the 16th century, buccaneers at sea developed pirate codes that established compensation based on the severity and anatomic location of crew members' injuries. Pirate codes varied from one captain to another, and commonly had provisions for discipline, specifications for each crewmate's share of treasure and compensation for the injured.

In 1881, Prussian Chancellor Otto von Bismarck established the Workers' Accident Insurance system with the passage of the Sickness and Accident Laws, which often are cited as a model for workers' compensation systems in Europe and later the United States. Bismarck was a skilled diplomat who unified Germany and forged peace among competing European nations. By the same manner, providing compensation to injured workers bought peace between employers and workers.

Workers' compensation coverage in the United States was established piecemeal, as various state legislatures debated how to provide compensation to injured workers. The first statewide workers' compensation law was passed in New York in 1898, with a handful of states adopting similar laws the following decade.

At the national level, Congress debated over uniform nationwide standards for workers' compensation. The competing interests between employers and workers became a political battle, with employers successfully stopping legislation that was deemed too worker-friendly.

Out of that stalemate, Congress passed the Federal Employees' Compensation Act (FECA) in 1916, which provided a federal model for other states to follow. It took decades to get every state on board, but by 1949, every state had enacted a workers' compensation program.

Ultimately, the decision to offer workers compensation for workplace injuries is a political decision, which means

that those who control the levers of political power can have long-lasting impact on whether, when and how workers are protected by the law.

Recent workers' compensation laws at the state level have been heavily influenced by big business and insurers. Across the country, workers' compensation benefits have been slashed, making it more difficult for injured workers to get sufficient benefits. At the same time, employers are paying the lowest rates for workers' comp. insurance since the 1970s.

Many of the injured workers subject to state laws have seen caps on their benefits and often are forced onto Social Security disability. This shifts the cost from the employer to the federal treasury. Such cost shifting might reduce any incentives to provide safe workplaces and reduce injuries.

During the current pandemic, big business has called for an exemption from liability for workers exposed to COVID-19 in the workplace. The Postal Service has joined in the fray by challenging almost every COVID-19 claim filed by letter carriers. NALC is actively responding to those challenges.

FECA is not immune from politics. Over the years, FECA has been amended, usually for the benefit of injured workers. FECA claims have generally taken a good deal of time to adjudicate, and injured workers often wait weeks or months for a claim to be accepted. In 1974, Congress amended FECA, and created "Continuation of Pay" for the first 45 days of disability. The 1974 amendments also released claimants to see their physician of choice, created civil service retention rights for injured workers and credited time on compensation toward years of service and other benefits.

Earlier this year, the Trump administration introduced the Federal Employees' Compensation Reform Act of 2020. See the May issue of *The Postal Record* for details.

The Government Accountability Office (GAO) recently released a report on the proposal, which concluded that the Trump administration's proposal punishes injured workers with families by reducing benefits. Additionally, the GAO found that modifying benefit design can have unforeseen consequences, and that the Department of Labor has not provided any modeling or analysis to Congress to assure that no disabled worker would be economically worse off as a result of being injured.

Decisions regarding the future of FECA are political decisions, guided by those who control Capitol Hill and the White House. While NALC continues to fight against detrimental changes to FECA, the best protection for injured workers is electing a worker-friendly president and worker-friendly lawmakers. Use your vote wisely.