

Workmen's Comp

Workmen's compensation provides funds to cover work accidents without lengthy litigation about fault.

By Richard I. Lehr, attorney

One of the most confusing areas of the law for employers and employees is workmen's compensation. This is primarily due to the fact that many workmen's compensation statutes are not easy to comprehend.

Furthermore, in a typical injury-related matter, such as an automobile accident, the fault or negligence of the parties is an essential issue. In workmen's compensation claims, however, the relative fault of employer and employee is rarely an issue.

The purpose

Workmen's compensation statutes were drafted to give employees greater protection in the case of an injury or death resulting during the course of employment. The reason why fault is not an issue is because state legislators preferred structuring a system that was less litigious than typical personal injury situations, unless an employee is guilty of willful misconduct. Thus, employees could receive compensation promptly, rather than waiting until all trials and appeals in the judicial system are exhausted. The cost for this protection, according to the legislative intent, would ultimately be borne by the consumer, shifted to the consumer by employers who elected to be covered under the workmen's compensation statutes.

Workmen's compensation does not displace an em-



ployer's duty to comply with the Occupational Safety and Health Act. Nor is workmen's compensation a form of income compensation, such as unemployment compensation or disability insurance. Rather, workmen's compensation is simply a statutory value of a particular injury.

Statutory coverage.

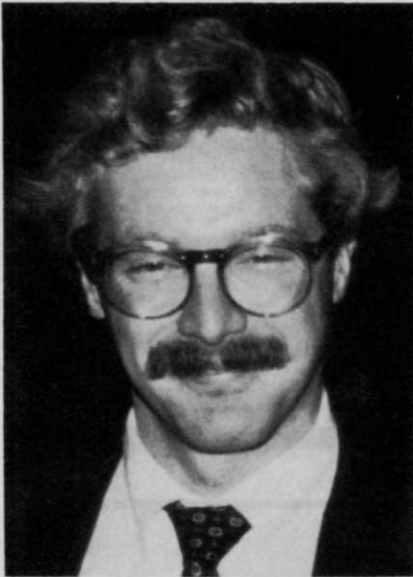
Each statute from state to state varies regarding the minimum number of employees an employer must have in order to elect workmen's compensation coverage. Many require a minimum of 10 employees, others re-

quire only three employees. An employer who is not covered by the workmen's compensation statute then may face typical common law litigation arising out of an employment-related accident. Therefore, those employers who are either ineligible or elect not to be covered by the workmen's compensation statute had better secure a comprehensive insurance policy in the event an employee is injured in a job-related accident.

A frequent issue in workmen's compensation matters is whether or not a particular injury is compensable. Generally, workmen's compensation statutes are given liberal construction, to cover an injury "by accident arising out of and in the course of employment." Thus, unforeseen, unexpected or sudden accidents resulting in injuries are generally covered. Accidents arising when an individual is performing incidental duties are also covered. Matters

Richard Lehr is a labor lawyer for the Birmingham, AL, firm of Sirote, Permutt, Friend, Friedman, Held, & Apolinsky, P.A.

continued on page 50



Richard I. Lehr, attorney

arising out of natural causes, such as degenerative eyesight or other medical conditions caused

by the aging process, would not be covered.

A developing area in workmen's compensation is whether or not occupational diseases are compensable. Though diseases generally are not compensable, occupational-related diseases may be compensable. If an employee is occasionally or remotely exposed to substances that may cause an occupational disease, it is unlikely that such exposure would be significant to justify the conclusion that the exposure contributed to the disease.

Pre-existing conditions.

Employers are frequently concerned that an employee with a pre-existing medical condition may join the work force and subsequently become injured, thereby qualifying for workmen's compensation. A pre-existing medical condition, though perhaps disqualifying a new employee from benefiting from the company's medical insurance for that matter, would probably be eligible for workmen's compensation if the pre-existing condition is aggravated at work. Employers who hire an individual with a pre-existing medical problem that may be aggravated at work runs serious legal and economic risks. Employers have the right to inquire about a prospective employee's medical condition at the time of employment, and we strongly advise employers to do so in the following manner:

1. First determine that an individual is qualified for the job.
2. Investigate the individual's medical history. Inquire about prior job-related injuries and illnesses and verify the accuracy of the information conveyed to the employer by the individual.
3. The employer may require the employee to submit to a pre-employment physical examination.

Preventing workmen's compensation disputes.

There are a number of things that employers and employees can do to limit potential workmen's compensation problems. Employers should implement a safety and

accident prevention program. Safety consciousness and compliance should be part of an individual's job performance evaluation. Those employees who are retained, yet perform their tasks in an unsafe manner, are potential hazards to themselves and to the company.

Furthermore, periodic spot check safety inspections should be made by the employer's insurance carrier. Alternatively, many state universities have "Safe State" programs where members of the university perform a similar inspection, free of charge, and recommend to the employer what needs to be done to improve safety at the work place. This, in turn, may become an effective shield should subsequent safety disputes or litigation arise.

Finally, employees should be told that if they believe they have been injured on the job, they should cease working and report to their supervisor immediately. Unless an emergency, the employer should immediately investigate and document the accident, because the employer's liability and employee's eligibility for disability insurance or workmen's compensation is contingent on the nature and facts of the accident. Then, the employer should send the employee to a company doctor to determine immediately the severity of the injury and approaches that need to be taken. In most states where workmen's compensation claims are contested through administrative procedures, this initial examination may be admissible and contribute to determining whether or not the employee receives workmen's compensation benefits.

If an employee has missed work due to a disability or workmen's compensation injury, many states permit an employer to condition re-employment on successfully passing a medical examination, if the medical problem is job-related. Employers need to check the laws of the states in which they do business to determine whether the employer is required to disclose to the employee the materials accumulated during the medical investigation. **WTT**

The Goossen
TRACTOR DRIVEN
BALE CHOPPER
[PROVEN IN DAIRY FARM USE]

NOW proven successful in **Lawn Service** and **Nursery** operations.

LAWN SERVICE USES:

- Mulching newly seeded lawns
- retains moisture
- prevents washing
- lessens wind damage

NURSERY USES:

- Mulching shrubbery
- Mulching bedding plants such as strawberry and raspberry

Call Toll Free **800-228-6542**
OUTSIDE NEBR.

GOOSSEN INDUSTRIES
P.O. Box 705 • Beatrice, NE 68310

Circle No. 115 on Reader Inquiry Card