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Is the U.S. Worker's Compensation System Being Dismantled?

After a disabling accident, a worker at a Costco store in Texas could be paid \$75,000 for losing the use of his or her hand. At Albertson's food stores, in the same state, the price of that hand would be about \$125,000. In states across the country where state workers' compensation programs remain intact, that hand would be worth approximately \$145,000.

As workers' compensation programs have quietly changed in the United States, it is unclear whether the protections to injured workers are being provided, yet the ability of many injured workers to sue is impeded, thus violating the basic premise, or "compensation bargain," of workers' compensation programs. Workers injured on the job require timely, equitable medical care and compensation from programs paid for by negligent, or responsible, parties. Whether the care and benefits offered under workers' compensation reform are equitable, or timely, seems to be a matter for federal investigation.

What is happening to what we know as the Workers Compensation System?

Governed by state guidelines, workers' compensation is an insurance program funded by employers to provide rapid medical and financial benefits for workers injured on the job. Developing out of the rise in workplace injuries during the early Industrial Revolution, the grand bargain of workers' comp programs developed to speed benefits to workers in exchange for their agreement not to sue employers for negligence.

Today, workers' compensation opt-out laws, in some states, give employers the chance to write their own rules. Opting out of workers' compensation usually reduces workers' compensation insurance premium rates, and allows employers to save money by taking control of the medical care of injured workers.

What does workers' compensation *reform* look like for employers?

Until 2004, the federal Department of Labor (DOL) monitored compliance of state workers' compensation programs. According to [ProPublica](#), since that time, 33 states revised workers' compensation laws to decrease benefits, or increase the threshold at which benefits are available to injured employees.

A recent segment on [National Public Radio \(NPR\)](#) turned a spotlight on companies that opt-out of workers compensation. Right now, only Texas and Oklahoma allow companies to opt-out of workers' compensation plans, but the option to opt-out is under debate in South Carolina and Tennessee.

At the forefront of the movement is a Texas company called PartnerSource. CEO and lawyer Bill Minick believes states should be able to replace state workers' compensation programs with their own policies—written in large part, by PartnerSource. Notes Mr. Minick, “We’re talking about reengineering one of the pillars of social justice that has not seen significant innovation in 100 years.”

What are the advantages to Employers to use Opt-Out Programs?

Besides cost savings on insurance premiums, the advantages to employers using [opt-out](#) workers' compensation programs include:

- Ability to define eligibility for injury benefits, designate available treatments, and dictate the duration of benefits
- Freedom to choose the healthcare providers, or offer a restricted network
- Ability to set limits on the type and use of medications
- Easy ability to terminate, or simply not offer, certain disability benefits
- Lower risk of litigation by enforcing mandatory arbitration

How does opting out affect injured workers?

The benefits of opting-out apply mostly to employers. In a fox guarding the henhouse scenario, companies that opt-out of workers' compensation decide who gets what and for how long.

With opt-out, employees face:

- Limited medical care defined by the employer. Workers' comp usually provides lifetime medical benefits for some conditions. Workers' compensation plans in Texas end after two years of treatment.
- Opt-out plans give employers the authority to dictate settlement—and settlement terms. Employees who do not agree lose their benefits.
- Instead of a structured appeals process, employees can appeal to a committee set up, and run, by their employer. If an injured employee decides to sue, mandatory arbitration clauses may take effect.
- Restrictive requirements mean injured employees must often report their injury by the end of their shift—instead of the usual 30 days allowed under traditional workers' comp.

For the public, the cost of long-term care of injured and disabled workers is being shifted to social programs like Social Security Disability Insurance (SSDI). A report from the [Center for Economic and Policy Research](#) released in October 2015 notes, “there is a strong relationship between the decline in state-level Workers Compensation beneficiaries and rise in new Disability claims. This suggests that people are turning to Disability because they are less able to collect Workers Compensation benefits.”

On October 20, 2015, ten ranking members of the House of Representatives and Senate sent a [letter](#) to Secretary of Labor, Thomas Perez, voicing concern “about a pattern of detrimental changes to state workers’ compensation laws,” and requesting a federal investigation.

We will be monitoring the federal investigation and update you as more information is released.

For additional information or if you have questions contact McCloskey Partners, LLC.

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