Workers' Compensation and the Prevention of Occupational Disease

PETER S. BARTH
Department of Economics
The University of Connecticut
Storrs, Connecticut 06268

One of the core goals of workers' compensation insurance in the United States is to reduce the incidence of injuries and diseases arising from the workplace. The system seeks to accomplish this by using financial incentives both to reward those employers who operate safe and healthful establishments and to punish those with poor performance records. In a general sense, the method of experience rating is quite simple. When a business has a poor track record in terms of injuries and diseases, its workers' compensation insurance premiums will be raised, thereby increasing the firm's costs. This will tend to undermine the firm's competitive position and could even force the firm to shut down. From a more positive perspective, the employer with an exemplary record derives competitive advantages, earning both greater profits and virtue as rewards.

Economists as well as social activists appear to favor such experience rating. The former are attracted because of the efficiency that springs from assigning costs to their source. For them, proper resource allocation dictates that unsafe establishments sell their output at prices that reflect the full economic costs of producing them. Such costs would include the indemnity and medical payments of workers' compensation. If the firm can no longer compete because of its high compensation costs, let it leave the industry if it cannot improve its record.

Aside from economists, many others appear to support experience rating, apparently believing that some sort of justice is served by it. They perceive this as a punishment of reckless employers where few or no other sanctions exist.

Does the workers' compensation system actually deliver on its goal of encouraging health and safety at the workplace? If not, could the system be made to work so as to assure the achievement of this goal? Without an unequivocal response to the first question, answering the second one is especially speculative. Regrettably, even though workers' compensation is more than 75 years old, at least in several of the states, the evidence is only shaky that the system does induce employers to operate as the theory suggests. If the data do show such a relation, the link appears to be weak. Yet the argument here is not to suggest that workers' compensation insurance is irrelevant as an inducement for employers to behave. Instead, the point is that although injuries due to accidents represent the best possible case for loss control measures by employers, *occupational diseases*, especially the long latent ones, offer no such payoffs for businesses. The following represent several reasons why the compensation system cannot be counted upon to deliver a healthful workplace:

1. The problem in the case of certain diseases is especially great because of the long time lag between the exposure and the first manifestation of illness. In a society in which business is often accused of thinking only for the short run—and

that may mean no longer than the time till the issuance of the next quarter's earnings statement—does one expect an employer to worry about an increase in workers' compensation premiums 10 or 20 years down the road?

Preoccupation with the short run may be perfectly rational from a managerial or an economic point of view, although hardly desirable from a public health perspective. For example, a dollar spent on reducing a workplace health risk today must save the firm $4.66 in compensation costs 20 years down the road with a discount rate of 8%. If the latency period is 30 years, unless an investment of $1.00 today saves $10.06 in 30 years, it is not worth the expenditure, with a discount rate of 8%.

As imposing as the force is of such discounting, an even stronger argument exists against the likelihood of a socially responsible outcome. Suppose a decision to invest in a healthier workplace would yield a positive payoff to the firm in 10 or 20 years. What is the probability that the persons deciding on the expenditure today will be able to derive credit for the decision a decade or two in the future? Clearly, that probability must be very low, because those individuals may be retired or deceased, working in some other part of the firm, or working for another employer. Thus, they can expect little or no chance for reward in the future for their current decision to make an expenditure. An alternative way to express this is that employees who, from a social perspective, make poor decisions for the firm today are not likely to be identified and held responsible when the consequences come home to roost.

2. One way for a business to keep compensation costs down for occupational illnesses is to provide a less hazardous workplace. However, that is not the only method. Instead, employers, or their insurers, may find that a cheaper approach is simply to defend themselves vigorously against any such workers' compensation claims. By doing so, the employer or insurer will often settle the claim with the worker, resulting in a lower indemnity payment than the statute mandates. Combining this with the probability that no claim will be filed for the disease, the compensation costs to the employer for occupational disease will be relatively low, thereby providing little incentive to clean up the workplace. Why is it that no claim may result? When the worker (or survivor) does not know the cause of the disease or where and when the hazard was encountered or what his or her rights to compensation are, claims for compensation simply do not materialize.

3. Many employers appear to have little confidence in state workers' compensation agencies, viewing them as lacking in sophistication and as making capricious decisions in difficult or complex cases. Hence, these employers feel that they may still have to pay for compensation when the worker was not made ill due to exposure at their establishment. Possibly, the hazardous exposure occurred in some other employer's establishment. In any case the employer will perceive that the economic reward, in the form of lower compensation costs, will not materialize from the decision to clean up the workplace.

An expression of this attitude is heard often in the cases of three categories of disease claims. First, many employers are paying for temporary and permanent disability claims for back problems when there was little the employer could have done to prevent them. In some states, the costs of back cases exceed 25% of the costs of all workers' compensation. Secondly, some of the heart cases being paid for by employers were undoubtedly beyond the control of the employer. Third, many of the stress claims (other than heart) that are beginning to emerge in some states are also seen as basically uncontrollable by employers. With all three of these categories of cases becoming more important, it is hardly surprising that employers believe that compensation costs are generally unavoidable. As such, a subtle message is communicated to employers, that is, their own actions are unrelated to their compensation costs.

4. Thus far, all the arguments have dealt with diseases. A more general issue, however, is that most employers do not face a dollar-for-dollar saving when they reduce compensation costs. Many (smaller) employers are not experience rated at all. Although their premiums will vary from those of other employers depending on their industrial classification and level of payroll, they simply are not experience rated. And though larger employers are experience rated, their rates are not entirely a function of their experience. The closest we come to pure experience rating occurs under self-insurance programs, which are limited, typically, to the few, largest employers in the jurisdiction.

5. The final argument also applies as much to issues of injury as to disease. Workers' compensation costs vary considerably across states, industries, and employers. Although some businesses face very high workers' compensation costs, such as longshore work, timber, and mining, the average employer pays about 1.5% of payroll for workers' compensation insurance covering both injuries and illnesses. One must wonder about the importance given to this rate of expenditure in many businesses. Even a 50% reduction in one's insurance costs will save a firm less than three quarters of a percentage point of payroll. Serious efforts (and expenditures) to clean up the workplace can hardly be expected to result, regularly, where the potential future savings are so relatively minimal.

A primary, but not exclusive, area of difficulty in assuring healthful workplaces is in the long latent diseases. At least three other areas exist where workers' compensation does not assure socially sound employer practices. First, it is most unlikely that any American jurisdiction would award indemnity benefits under workers' compensation for reproductive disorders resulting from hazardous workplace exposures. (It is possible, however, that medical treatment costs could be paid by workers' compensation.) Second, hazards transmitted by workers to others which result in disease for the latter are not covered by workers' compensation. For example, children sickened by lead carried home from the workplace are simply not a part of the workers' compensation system. It must be noted, however, that because such third parties are uncovered by workers' compensation, they do have access to the tort system.

A third area of special difficulty occurs in cases of infectious diseases. Workers frequently encounter obstacles in any quest for compensation in which they are victims of "ordinary diseases of life." Again, my point simply is to demonstrate that the workers' compensation system cannot be counted on to deliver a healthful workplace.

If workers' compensation is ineffective currently at providing adequate safety and health for workers, can it be made tougher or stricter? To do so would satisfy those who seek retribution against employers whose workplaces have caused disease. I am persuaded that such a strategy is a mistake, however, at least in cases involving long latent illnesses.

It seems anomalous that members of organized labor would seek "justice" in such form, whereas some in their ranks have been working to eliminate experience rating in the unemployment insurance area. For those encouraging this type of change, experience rating has served too well, encouraging some employers to vigorously and regularly fight claims for unemployment compensation. Perhaps correctly, they perceive experience rating not as a spur to employment retention, but instead as a reason for employers both to limit employment creation and to challenge applications for compensation by unemployed workers. The analogy in workers' compensation is that employers are induced by experience rating to stonewall claims, and not necessarily to make the workplace more healthful.

By eliminating experience rating in cases of long latent disease, the employer has less of a stake in fighting claims. Indeed, the employer would then have no disincentive to alert workers and the public heath community that a hazard may have existed at the workplace. It could open the door to the possibility of greater employer-worker cooperation in the entire disease prevention process. It also would serve to eliminate a source of employer discrimination in the hiring and retention of workers previously exposed to hazards.

Finally, it must be noted that the single most significant difficulty in workers' compensation for industrial diseases is the underutilization of the system. The core problem is one of ignorance, that is, regarding etiology, source of exposure, and rights to benefits by workers and their survivors. To ameliorate those is an immense responsibility of government, the public health community, and organized labor. The latter is especially limited in carrying this out when well below 20% of the American labor force is organized.