

State Workers' Compensation Reform & Workplace Safety Regulations

By MATT W. SMITHA, KENT R. DESTENSTAD and KATHLEEN C. BROWN

The reform of many state workers' compensation systems during the 1980s and 1990s resulted in the adoption of workplace safety regulations on the state level. The purpose of most state-level workplace safety laws is to reduce occupational injuries and subsequent workers' compensation costs. As part of a study to evaluate the effects of four specific types of mandatory state-level workplace safety initiatives during the time period 1992 to 1997, state-level legislation was reviewed and classified for 50 states. The four types of state-level workplace safety initiatives are safety committee laws, safety program laws, workers' compensation insurance carrier loss control regulations, and employer targeting programs (enforcement based on high claims or high injury rate). During the time period studied, 26 states had one or more of the four types of initiatives. Seventy-three percent of the requirements were implemented between 1991 and 1995. Targeting programs were found to be the most popular type of state-level workplace initiatives.

Although occupational injury, illness and fatality rates have steadily declined since the inception of OSHA (Conway and Svenson 36), workers' compensation (WC) payments that cover medical and indemnity expenses for injured workers dramatically increased well into the 1990s (Spieler 130).

Before 1970, WC attracted little attention due to relatively consistent and low costs for employers (Spieler 131). By 1992, however, employers' concerns over rising WC premium rates was increasing. WC premium levels among states were being compared and ranked. State officials feared high premium levels and the loss of jobs as industries moved to states with more-favorable premiums and new industries avoided states with high WC costs.

To help businesses remain competitive and reduce runaway claim and premium costs, major legislative action and changes in state WC law soon followed. In addition, some states with approved state OSHA plans adopted employer safety requirements that were more stringent than federal requirements (Conway and Svenson 39).

Changes in WC laws included increased penalties for fraudulent claims; limitations on benefits paid; medical case management initiatives; premium rate deregulation; introduction of large-deductible insurance programs; and certain requirements for the implementation of employer safety and health programs (Conway and Svenson 43). The Insurance Information Institute estimated that between 1982 and 1988, state legislatures enacted at least 1,050 WC-related amendments (Weber).

The Insurance Industry Institute, citing data from the National Council on Compensation Insurance, reported that claim costs between 1980 and 1990 increased an average of 11 percent per year, while between 1991 and 1995, these costs increased only two percent annually. The institute identified successful accident prevention efforts as a reason for the decline. Premium rate declines are evident in states that have enacted comprehensive WC reforms in recent years (Conway and Svenson 47).

Employers are generally subject to penalty provisions if they fail to comply with mandatory workplace safety requirements. At present, the enforcement can come from either the WC authority or the state OSHA agency (if the state has an approved plan).

Some states have achieved better coordination of enforcement activities by placing the state OSHA and WC agencies in the same department (e.g., Oregon). States without approved OSHA plans generally rely on the WC agency to impose fines for noncompliance, or in some cases, an employer may be turned over to federal OSHA for enforcement actions. However, federal OSHA cannot enforce state-specific safety statutes if the statutes are different from federal requirements (Spieler 256).

Recent reforms in many state WC programs mandate the implementation of employer safety and health programs. Voluntary programs have also been encouraged through statutory language (Conway and Svenson 43). States with voluntary initiatives include Colorado, Missouri and South Carolina. Twenty-three states have mandatory workplace safety requirements in either their WC law or as part of their state's OSHA pro-

Targeting initiatives have become a popular approach for both federal and state OSHA agencies.

gram. States with mandatory requirements include Arkansas, California and Texas (Conway and Svenson 44). These requirements encompass a variety of approaches, ranging from safety committee requirements to written safety and health program rules. Ten states have voluntary safety and health program options, and all other states operate without any type of safety and health program requirement or option.

Either the state's OSHA plan or the WC agency generally regulates the health and safety program requirements. Exceptions include California, Minnesota and North Carolina, where both WC agencies and state OSHA plans have programs (Conway and Svenson 43).

Federal OSHA has proposed a safety and health management program standard ("Federal News" 7). The intention of these types of standards, including the federal proposal, is the control of site-specific hazards. Regardless of whether specific hazards are government regulated,

employers must address hazards in their site-specific safety and health plans (OSHA).

Another regulatory mechanism enacted in many states to limit WC costs involves insurance carrier accident prevention services, also known as loss control regulations, as a way to address increasing WC costs. States with active loss control mandates include Oregon, Florida, Texas and Maine. These regulations can be extensive and prescribe the type of loss control service, reporting frequency of service providers and qualifications of loss control professionals (Guarascio 24).

Targeting initiatives have become a popular approach for both federal and state OSHA agencies. Such initiatives involve mandatory safety requirements for employers with above-average injury or WC loss rates. Targeting strategies seek to reduce the injury rates of employers with above-average injury or WC loss rates. Targeting initiatives often encompass mandatory inspection and safety program provisions for certain high-risk employers.

Little is known about the extent to which the four approaches have been incorporated into state legislation. Research is needed to describe the frequency with which these approaches are used in the states. Therefore, this study was designed to classify the mandatory state-level workplace safety requirements into four

groups that include safety committee laws, safety program laws, insurance carrier loss control regulations, and targeting initiatives.

LEGAL CHALLENGES TO STATE ACTIONS

In the early years of WC, states' attempts to require safety improvements through legal intervention into the employment relationship were consistently challenged and struck down by the courts. In a limited number of decisions, the courts supported the use of traditional state police powers in the interest of public safety for regulation of extremely hazardous work and for oversight of working conditions for special groups, particularly women and children (Spieler 174).

In recent times, states that have sought to directly or indirectly regulate occupational safety and health without federally approved OSHA plans have faced legal challenges to their authority to undertake such actions. Preemption is a legal doctrine under which federal laws take precedence over state laws dealing with the same subject (Dreux and Sapper 48). In 1998, Texas was forced to alter its extra hazardous employer inspection program to cover only public-sector employees due to successful employer-led legal challenges (Texas Workers' Compensation Commission).

States may claim protection of non-OSHA-related safety and health regulations under the savings clause. When Congress was considering the OSH Act in 1970, many voiced concern that the new law would negatively affect state WC laws. To prevent this, Congress included

FIGURE 1 Data Collection Methodology

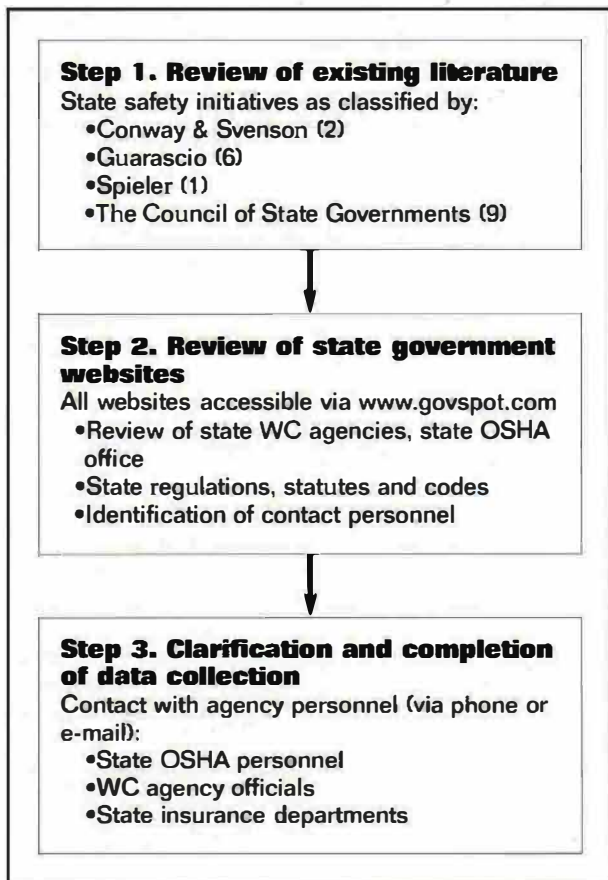
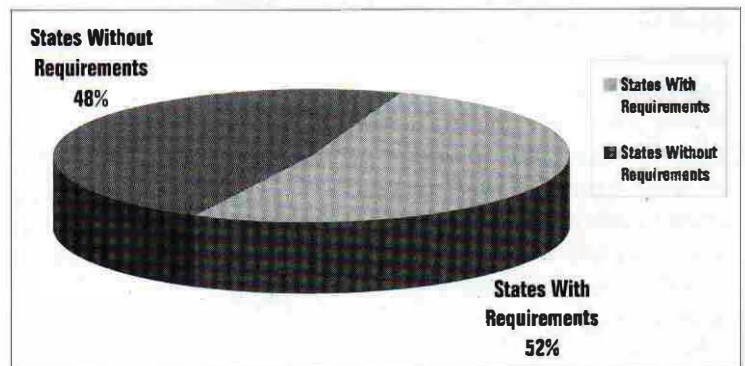


FIGURE 2 States with One of the Four Types of Requirements vs. States Without Requirements (1992-97)



Note: Requirements include employer safety committee laws, safety programs laws, insurance carrier loss control regulations and targeting initiatives.

the savings clause in Section 4(b)(4) which states "nothing in this act shall be construed to supersede or in any manner affect any workmen's compensation laws" (Dreux and Sapper 48).

METHODS

This study classified the mandatory state-level workplace safety requirements into the following groups: a) safety committee laws; b) safety program laws; c) insurance carrier loss control regulations; and d) targeting initiatives. Table 1 defines the classification rules used for each type of safety requirement. Figure 1 outlines the steps used in the classification process.

The first step in the classification process involved reviewing previous work done. (See Guarascio, Spieler, the Council of State Governments, and Conway and Svenson.) Additional information on state-level initiatives was obtained by reviewing state regulations and from state WC and labor agencies. Requirements in place during the time period studied (1992 to 1997) were included in the review.

In some cases, states had safety committee and safety and health program laws as part of employer targeting strategies (e.g., Connecticut, Florida). For variable classification purposes, states with targeted safety committee or safety and health program laws were classified as having the targeting variable in place (see the classification rules outlined in Table 1).

RESULTS

Table 2 details the results of the classification process by type of safety requirement. Table 3 describes the requirements of each state safety regulation by type. During the time period studied, 26 states shared a total of 48 safety requirements. Figure 2 shows that a slight majority of states now have at least one of the four types of mandatory workplace safety requirements in place (52 percent with requirements versus 48 percent without). Table 4 lists the 24 states that did not have any of the four types of mandatory workplace safety requirements. During the time period of interest, nine states had safety committee requirements; 10 had safety and health program requirements; 11 regulated insurance carrier loss con-

rol services; and 18 states had targeting initiatives in place.

Adoption of state workplace safety requirements was very much a phenomena of the early 1990s. Eighty-one percent were implemented in the 1990s. In 1994, the greatest number of requirements (12 total) was implemented by six different states. Seventy-three percent of the workplace safety requirements were implemented between 1991 and 1995.

Of the 26 states with mandatory safety initiatives in place between 1992 and 1997, 10 (38 percent) had only one of the four possible variables in place; 10 (38 percent) had two in place; and six (23 percent) had at least three of the variable

classifications. Interestingly, none had all four of the safety variable classifications in place (following the variable classification scheme outlined in Table 1).

Various combinations of safety requirements were found across the states. The most-popular occurrence of a single safety requirement was the use of targeting programs (19 percent of all states with requirements). The most popular two-way combination was the implementation of loss control regulations in conjunction with targeting strategies (19 percent of all states with requirements). The most-frequent three-way combination involved targeting strategies used with safety committee and safety pro-

TABLE 1 Classification Rules for State-Level Safety Requirements

Type of Requirement	Classification Rules
<i>Safety committees</i>	Employer safety committee laws that are found under general state statutes or workers' compensation (WC) regulations. Safety committee requirements associated with the purchase of insurance such as managed care policies were not counted. Safety committee requirements under employer targeting programs were not counted because these requirements were counted under the <i>Target</i> variable.
<i>Safety and health programs</i>	Employer safety and health program requirements (sometimes known as accident prevention plans) found under general state statutes or WC regulations. Safety and health program requirements associated with the authorization or setting up of self-insurance or self-insurance pools were not counted. Safety and health program requirements associated with targeted (or extra hazardous) employer programs were not counted because this requirement was accounted for under the <i>Target</i> variable.
<i>Insurance carrier loss control services</i>	Specific regulation of insurance carrier loss control or loss prevention services (sometimes known as accident prevention services). Regulations that affect service frequency requirements, type of service requirements, safety and health plan approval, qualifications of personnel and similar requirements. All regulations with state involvement in the review and certification of loss control plans were counted. All regulations requiring WC insurance carriers to assist policyholders with implementation of health and safety programs were counted.
<i>Targeting initiatives</i>	Requirements found under general state statutes or WC regulations (sometimes known as extra hazardous employer programs) where a workplace safety intervention is required based on an employer's injury rate, WC experience rating, claims frequency or other rating method. Targeting requirements may include safety committees, employer safety and health programs, or mandatory safety inspections or consultations.

State-level workplace safety interventions are potentially important causative factors in recent injury rate declines and are deserving of adequate evaluation to determine their impact.

gram regulations (12 percent of all states with requirements). Safety committee regulations were always paired with one or two other requirements.

CONCLUSIONS

Implementation of the four types of state-level workplace safety regulations was popular during the 1990s. Many states have demonstrated a willingness to adopt workplace safety regulations that are more stringent than traditional federal OSHA standards in an effort to reduce WC costs and employer injury rates. Tony Skiff, director of workers' education for the Connecticut Compensation Commission, described the importance of prevention in WC as follows, "Safety is the most direct, effective method of reducing workers' compensation caseloads and costs. This is true at both the work-site and the jurisdictional level" (Spieler 250).

The call for inclusion of safety and prevention in WC reforms was seen in the early 1970s Presidential WC Committee recommendations (Spieler 133). The call can still be heard today, as evidenced by the American College of Occupational and Environmental Medicine's (ACOEM) WC reform recommendations ("ACOEM's

Eight Best Ideas" 20). ACOEM calls on states to view workplace injuries and illnesses as evidence that prevention efforts have failed and to use them to target safety and enforcement programs. This recommendation was noted first among a list of eight items. Accident/illness prevention is a key element in seeking to reduce human suffering and achieve lower WC insurance costs (National Conference of State Legislatures 21).

State-level workplace safety interventions are potentially important causative factors in recent injury rate declines and are deserving of adequate evaluation to determine their impact. The four types of state-level safety requirements studied represent alternative approaches to workplace safety regulations and are quite different than traditional, hazard-specific federal OSHA standards.

It should be noted that some state-level workplace safety regulations have already undergone close legal scrutiny under the preemption doctrine (e.g., Texas). As state-level regulations expand in the future, additional legal attention is likely as jurisdictional conflicts arise between federal OSHA and state WC laws (see Dreux and Sapper). ■

TABLE 2

Classification of States by Type of Mandatory Safety Initiatives (Year Begun)

Safety Committee Laws	Safety & Health Program Laws	Insurance Carrier Loss Control Regulations	Targeted Programs
Connecticut (1995)	Alaska (1985)*	Arkansas (1993)	Arkansas (1994)
Florida (1993)	California (1991)	California (1994)	California (1994)
Minnesota (1995)	Hawaii (1984)	Florida (1985)	Connecticut (1995)
Montana (1993)	Louisiana (1983)	Kansas (1993)	Florida (1994)
Nebraska (1994)	Minnesota (1991)	Maine (1991)	Louisiana (1988)
Nevada (1994)	Montana (1993)	Mississippi (1993)	Maine (1991)
New Hampshire (1994)	Nebraska (1994)	Missouri (1993)	Minnesota (1995)
Oregon (1991)	Nevada (1994)	New Mexico (1991)	Nebraska (1994)
Washington (1980)	New Hampshire (1994)	Oklahoma (1995)	Nevada (1994)
	Washington (1980)	Oregon (1988)	New Mexico (1991)
		Texas (1988)	New York (1997)
			North Carolina (1991)
			Oklahoma (1995)
			Oregon (1991)
			Tennessee (1993)
			Texas (1991)
			Utah (1992)
			West Virginia (1993)

**Alaska's employer safety and health program standard was abolished in 1995.*

TABLE 3 Description of State Safety Requirements

	State (Year Requirement Began)	Description
<i>Safety Committee Laws</i>	Connecticut (1995)	Employers with 25 or more employees
	Florida (1993)	1993-96 employers with 10 or more employees; 1996 employers with 20 or more employees
	Minnesota (1995)	Employers with 25 or more employees
	Montana (1993)	Employers with 5 or more employees
	Nebraska (1994)	All employers
	Nevada (1994)	Employers with 25 or more employees
	New Hampshire (1994)	Employers with 5 or more employees
	Oregon (1991)	Employers with 11 or more employees
<i>Safety & Health Program Laws</i>	Washington (1980)	Employers with 11 or more employees
	Alaska (1985)	All employers 1985-95 (law was abolished in 1995)
	California (1991)	All employers
	Hawaii (1984)	1984-95 all employers; 1996-97 only employers with 25 or more employees
	Louisiana (1983)	Employers with 15 or more employees
	Minnesota (1991)	All employers in certain SIC codes (all manufacturing SIC codes affected)
	Montana (1993)	All employers
	Nebraska (1994)	All employers
	Nevada (1994)	Employers with 11 or more employees
	New Hampshire (1994)	Employers with 10 or more employees
<i>Insurance Carrier Loss Control Regulations</i>	Washington (1980)	All employers
	Arkansas (1993)	Carriers' loss control plans reviewed by state
	California (1994)	Loss certification program (carriers reviewed by state)
	Florida (1985)	Various requirements affecting carrier loss control services
	Kansas (1993)	Carriers must help policyholders establish a safety and health program
	Maine (1991)	Various requirements affecting carrier loss control services
	Mississippi (1993)	Carriers must help policyholders establish a safety and health program
	Missouri (1993)	Carriers must have safety engineering and management plan approved by state
	New Mexico (1991)	Carriers must help policyholders establish a safety and health program; annual inspection required
	Oklahoma (1995)	Carriers must help certain policyholders establish a safety and health program
	Oregon (1988)	Insurer loss prevention plan required (state oversight)
	Texas (1988)	Various requirements affecting carrier loss control services
<i>Targeting Initiatives</i>	Arkansas (1994)	Hazardous employer program under WC
	California (1994)	Targeted inspection and consultation programs
	Connecticut (1995)	Safety committee required if employer has above-average rates
	Florida (1994)	Employers with above average SIC injury rate plus three or more lost-time injuries within three years must implement a safety and health program
	Louisiana (1988)	Hazardous employer law
	Maine (1991)	Employers with WC experience rating of 2 or more must submit safety plan to state
	Minnesota (1995)	Safety committees required for certain employers who meet WC loss or injury rate criteria; also state targeted inspection program through state OSHA
	Nebraska (1994)	Targeted consultation program for certain employers with high injury rates
	Nevada (1994)	Safety program required if employer meets experience rating criteria
	New Mexico (1991)	Hazardous employer law
	New York (1997)	Certain employers who meet payroll requirements and experience rating criteria must establish safety and loss prevention plan
	North Carolina (1991)	Safety program required if WC experience modification of 1.5 times the average
	Oklahoma (1995)	Employers targeted for safety programs if injury/illness rate is 1.25 times the average
	Oregon (1991)	Safety committee required for employers with 10 or fewer employees and if lost-workday incident rate in top 10 percent
	Tennessee (1993)	Safety committees required for certain employers who meet WC experience modification criteria
	Texas (1991)	Hazardous employer law
	Utah (1992)	Employers with above average rates must implement a safety program
	West Virginia (1993)	Employers with above-average rates or experience modification factor must implement various requirements

TABLE 4

States Without Mandatory Requirements

- Alabama
- Arizona
- Colorado
- Delaware
- Georgia
- Idaho
- Illinois
- Indiana
- Iowa
- Kentucky
- Maryland
- Massachusetts
- Michigan
- New Jersey
- North Dakota
- Ohio
- Pennsylvania
- Rhode Island
- South Carolina
- South Dakota
- Vermont
- Virginia

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Matt W. Smith, Dr.PH, CSP, CIH, is team manager, health and safety, for Honda Manufacturing of Alabama, LLC. This research study was part of his doctoral dissertation and was conducted while attending the University of Alabama at Birmingham. During the last nine years, Smith has held various safety management positions, primarily with manufacturing firms. He holds a B.S. in Safety Management from Indiana State University, an M.P.H. in Environmental Health from the University of North Texas and a Dr.PH in Occupational Health and Safety from the University of Alabama at Birmingham.

Kent R. Oestestad, Ph.D., is associate professor and assistant dean, School of Public Health, at the University of Alabama at Birmingham.

Kathleen C. Brown, Ph.D., is professor, graduate studies, school of nursing, at the University of Alabama at Birmingham.

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