

Dhananjayrao Gadgil Library



GIPE-PUNE-007161

**THE WORKMEN'S COMPENSATION
PROBLEM IN NEW YORK STATE**

STUDIES IN SOCIAL LEGISLATION

PUBLISHED BY

NATIONAL INDUSTRIAL CONFERENCE
BOARD, INC.

247 Park Avenue, New York

	<i>Cloth Binding</i>
Legal Restrictions on Hours of Work in the United States	\$2.50
Workmen's Compensation Acts in the United States: The Medical Aspect.	3.50
Uniform Medical Provisions for Work- men's Compensation Acts	1.00
The Employment of Young Persons in the United States	1.50
Minimum Wage Legislation in Massa- chusetts	2.50
The Workmen's Compensation Prob- lem in New York State	3.50

Complete list of publications sent on request

COMPENSATION PROBLEM IN NEW YORK STATE



NATIONAL INDUSTRIAL CONFERENCE BOARD, Inc.

X:955.7311

F7

COPYRIGHT, 1927
NATIONAL INDUSTRIAL CONFERENCE BOARD, INC.

7161

Published April, 1927

121

FOREWORD

THE subject of workmen's compensation legislation and its administration has commanded the close attention both of legislators and industrialists during the last few decades. Because it is of comparatively recent development and in its early stages has necessarily been largely experimental, compensation legislation in the various states has been kept in the forefront as a subject of legislative consideration by the constant stream of proposed amendments, while its effect upon operating costs in industry and business has kept it a live issue with employers. It was, therefore, both natural and proper that when, in March, 1926, the New York State Legislature created by joint resolution an Industrial Survey Commission to investigate existing conditions under which the manufacturing and mercantile business of the state was carried on, with particular reference to any apparent effects of restrictive or regulatory legislation, workmen's compensation should be selected as a subject for particular attention.

In its desire to be helpful to the Survey Commission as well as to itself by a full disclosure of the facts, Associated Industries of New York State, Inc., requested the National Industrial Conference Board to conduct an investigation for the purpose of assembling and placing at the disposal of the Survey Commission pertinent material relating to the experience of employers and wage earners with the operation of the New York workmen's compensation law and its cost. In the few months which were available before the Survey Commission closed its public hearings only a preliminary report could be submitted on this admittedly complex and highly technical subject. Rather the endeavor was made to assemble material which would be of particular assistance to the Commission in evaluating the effects of the present workmen's compensation act upon all groups concerned, and in considering the advisability of recommending amendments or additions to the law.

The preliminary report was submitted to the Commission in January, 1927. In its present revised form the material has been somewhat rearranged in the interest of clearer presentation, and certain data which have become available since the preparation of the original draft, such as the 1926 workmen's compensation data of the State Department of Labor and the results of additional replies from employers to the Board's questionnaire, have been included, but these supplementary data have tended to confirm rather than to alter the original conclusions.

The Conference Board is under great obligation to a number of organizations which are in close touch with the workmen's compensation situation in New York as well as in other states, such as: the National Council on Compensation Insurance, the National Bureau of Casualty and Surety Underwriters, the Compensation Inspection Rating Board, the Workmen's Compensation Publicity Bureau and the New York State Department of Labor. These organizations have given generously of their time and have placed invaluable material at the disposal of the Conference Board. Grateful acknowledgment is also made of the courtesy of a number of the leading casualty insurance companies operating in New York State which, at considerable expense, have given this study the benefit of their records of experience.

The Conference Board is particularly indebted to nearly five hundred manufacturing establishments in New York State which together employ about one-fifth of the state's wage-earning population, and to the committees of industrial executives in leading centers which acted as coordinating agencies in securing the widest possible expression of factual and personal experience from their respective communities. These employers searched their past records to provide factual material bearing on their experience and that of their employees, which might throw light upon problems which confront the administrators of the law. The Board wishes to express to all these groups its appreciation of the assistance rendered.

This volume is the result of an investigation conducted by the Conference Board's Research Staff, under the supervision of the Board's Staff Economic Council.

FOREWORD

vii

In the preparation of its studies the National Industrial Conference Board avails itself of the experience and judgment of the business executives who compose its membership, and of recognized authorities in special fields, in addition to the scientific knowledge and equipment of its Research Staff. The publications of the Board thus finally represent the result of scientific investigation and broad business experience, and the conclusions expressed therein are those of the Conference Board as a body.

CONTENTS

	PAGE
INTRODUCTION	1
• Employers' Liability Laws	2
Development of Workmen's Compensation Legislation	4
Scarcity of Accurate Statistics	7
 CHAPTER	
I. DEVELOPMENT AND PROVISIONS OF THE NEW YORK	
STATE COMPENSATION LAW.	10
History	10
Original Law	10
Growth by Amendment	11
Present Provisions	16
General Coverage	16
Compensation	18
Liability of Employers.	18
Waiting Period	20
Medical Aid	20
Average Wages	20
Forms of Disability	21
Benefit Schedules	21
Administration of the Law	23
The Industrial Board	25
Workmen's Compensation Insurance	27
Proposed Amendments	29
 II. COMPARISON OF THE NEW YORK COMPENSATION LAW	
WITH THOSE OF OTHER STATES	31
Summary of the Relative Liberality of the New York Law	32
Comparison of Benefit Scales	34
Comparison of Administrative Provisions	38
 III. ATTITUDE OF THE COURTS TOWARD INTERPRETATION	
AND ADMINISTRATION OF THE LAW	41
Introduction	41
Purpose and Effect of Judicial Review of Awards	43
Scope of New York Workmen's Compensation Law	46
The Application of the Law to Hazardous Occupa- tions and Occupational Diseases	47
Definition of Accident	48

CHAPTER	PAGE
Limitation Imposed by the Phrase "Arising Out of and in the Course of Employment"	50
Accidents Occurring Outside of Working Hours	51
Accidents Occurring Elsewhere than in the Establishment of the Employer	52
Accidents During Working Hours not Arising Directly Out of Employment	54
Definition of Employee	58
Extraterritoriality	61
Interstate Commerce	63
Admiralty or Maritime Cases	66
The Employer's Responsibility for Accidents Due Solely to the Fault or Negligence of Others.	68
Disobedience of Orders	69
Assault by Fellow Employees or Outsiders	70
Intoxication	73
The Responsibility of an Employer for the Ultimate Consequences of an Injury	75
Resultant Disease or Infection	76
Serious or Fatal Consequences of Injury Due to Fault of Injured Worker	79
Acceleration or Aggravation of Pre-existing Disease	80
Unmerited or Excessive Awards	85
Malingering	86
Excessive Awards	88
Double or Concurrent Awards	94
Evidence of Prejudice or Abuse of the Informal Method of Investigation	98
Arbitrary or Unfair Conduct	99
Unjudicial Rulings or Methods of Procedure	100
Awards Unsupported by Evidence	102
Summary	104
IV. WORKMEN'S COMPENSATION INSURANCE	114
Application of Insurance to Workmen's Compensation	114
Types of Insurance Carriers	116
Stock Companies	117
Mutual Companies	118
State Funds	121
Reciprocal Insurance	122
Self-insurance	123

CONTENTS

xi

CHAPTER	PAGE
The Growth of Workmen's Compensation Insurance in New York State	125
Types of Insurance Carriers Operating in New York State	130
The Technique of Rate Making	132
Rating Organizations	132
The National Council on Compensation Insurance	134
The Compensation Inspection Rating Board	135
Rate Making	136
Rate Making Procedure	138
Pure Premiums	139
Expense Loading	140
Merit Rating	141
Schedule Rating	141
Experience Rating	147
Incurred Losses and Loss Ratios	152
Expenses and Expense Ratio	158
Reserves	165
Supervision of State Insurance Department	168
Exclusive State Funds vs. Private Insurance	169
New York State Insurance Fund	172
V. EXPERIENCE IN OPERATION OF THE NEW YORK WORK-	
MEN'S COMPENSATION LAW	177
Accidents	179
Cases Indexed for Hearings by Referees	185
Hearings Held by Referees	188
Cases Closed	190
Compensable Accident Cases	191
Comparison of Reported Accidents and Compensation Cases	195
Effect of Reduction in Waiting Period on the Number of Compensated Cases	196
Distribution of Compensated Cases by Industry	198
Wage and Age Distribution of Injured Employees	202
Administrative Problems	205
The Referee System	205
The Referee System vs. the Agreement System	209
Malingering and Fraudulent Claims	212
Aggravation of Former Injuries	215
Lump Sum Awards	217
General Considerations	221

CHAPTER	PAGE
Medical Problems	223
Strains and Hernia	225
Accident Prevention	226
Insurance	230
Experience with Self-insurance	234
VI. THE COST OF WORKMEN'S COMPENSATION IN NEW YORK STATE	236
Insurance Premium Rates	236
Compensation Costs by Type of Disability	245
Death Claims and Awards	247
Permanent Total Disability Cases	248
Permanent Partial Disability Cases	250
Temporary Disability Cases	251
Compensated Occupational Disease Cases	255
Cost of Compensation	257
Cost per Case by Type of Disability	257
The Trend of Costs as Reported by Employers	260
Ratio of Compensation Cost to Payrolls and Sales	272
Factors Influencing the Rising Cost of Compensation in New York State	274
New York Cost Compared with Other States	275
Comparative Benefit Cost by States	282
Average Cost per Case in New York and Competing States	297
Pennsylvania and Ohio Costs Compared with New York	303
The Trend of Costs by States	307
Conclusion	319
VII. SUMMARY	322
Comparison of New York Compensation Law with Laws of Other States	322
Comparison of Benefit Schedules	323
Comparison of Provisions for Waiting Periods and Retroactive Clauses	325
Comparison of Compensation Costs	326
Workmen's Compensation Insurance in New York State	328
Judicial Interpretation of New York Compensation Law	330
Appendix	335
Comparison of Provisions of Workmen's Compensation Laws in the Various States	335

LIST OF TABLES

TABLE	PAGE
1. Chronology of Workmen's Compensation Legislation in the United States	5
2. Amendments to the New York Workmen's Compensation Law, 1914-1926, Summarized	12
3. Effective Dates, Amendatory Acts, New York State Workmen's Compensation Law	13
4. Character of State Compensation Insurance Funds, by States	116
5. Workmen's Compensation Insurance Premiums Earned in New York State, between July 1, 1914 and December 31, 1925	126
6. Workmen's Compensation Insurance Premiums Written in New York State between July 1, 1914 and December 31, 1925	126
7. Premiums Earned by Individual Insurance Carriers in New York State, 1925	133
8. Analysis of Schedule Rating	145
9. Analysis of Experience Rating, Summary by Premium Groups	150
10. Analysis of Experience Rating; Average Per Cent and Range of Credits and Charges by Premium Groups.	150
11. Experience Rating Analysis; Frequency Distribution of Credits and Charges	151
12. Premiums, Losses and Indicated Loss Ratios, by Policy Year of Issue	154
13. Trend of Loss and Expense Ratios of Stock and Mutual Companies Combined, New York State, Policy Years, 1914-24	157
14. Analysis of Expenses for Insurance Carriers in New York State, Calendar Year 1925	160
15. Expenses and Expense Ratios of Insurance Carriers in New York State, 1914-1925	164
16. Ratio of Payments to Losses Incurred, Experience of One Carrier.	167
17. Summary of Business of the State Insurance Fund, between June 30, 1914, and June 30, 1925	175

LIST OF TABLES

TABLE	PAGE
18. Cities and Towns in New York State Represented in Summary of Experience with Workmen's Compensation Law	178
19. Accidents Reported in New York State, between July 1, 1914 and January 31, 1927	180
20. Accidents Reported, by Administrative Districts, between July 1, 1921 and June 30, 1926	184
21. Accident Frequency per \$1,000,000 of Payroll in New York State, January 1, 1918 to December 31, 1923	185
22. Compensation Cases Indexed for Hearing before Referees in New York State, July 1, 1921 to January 1, 1927	186
23. Cases Indexed for Hearing in New York State by Districts, between July 1, 1921 and June 30, 1926	188
24. Hearings Held, Cases Closed and Number of Hearings per Case Closed in New York State, July 1, 1922 to June 30, 1926	189
25. Total Cases Closed and Number of Claims Disallowed in New York State, Fiscal Year 1925-26	191
26. Total Compensation Cases and Dates of Closing, New York State, July 1, 1914 to June 30, 1926	192
Per cent of Cases Closed Each Year, July 1, 1920 to June 30, 1926	192
27. Proportion of Compensated Cases to Reported Accidents in New York State, July 1, 1914 to June 30, 1926	195
28. Effect of Reduction in Waiting Period, between July 1, 1923 and June 30, 1926	196
29. Compensation Cost Due to Reduction in Waiting Period	198
30. Distribution of Compensated Cases by Industry and Extent of Disability, July 1, 1923 to June 30, 1926	199
31. Per Cent of Compensated Cases in Each Class of Disability, by Industry, July 1, 1923 to June 30, 1926	200
32. Weekly Wages of Injured Employees in Compensation Accidents, July 1, 1925 to June 30, 1926	203
33. Ages of Injured Employees in Compensated Accidents by Sex and Disability, July 1, 1925 to June 30, 1926	204
34. Comparison of Wages Earned and Compensation Benefits According to Weeks of Disability Under Seven Weeks Retroactive Provision	214

LIST OF TABLES

xv

TABLE	PAGE
35. Changes in Manual Rates and Rate Level, June 1914, New York State	237
36. Manual Rates in Effect in New York during the Period from July 1, 1914 to Date, for Each of the Important New York Classifications	240
37. Distribution of Number of Compensable Cases, Total Amount of Awards and Average Award Per Case, July 1, 1924 to June 30, 1926	246
38. Classification of Death Cases in New York State between July 1, 1923 and June 30, 1926	248
39. Permanent Total Disabilities, between July 1, 1914 and June 30, 1926	249
40. Distribution of Permanent Partial Disabilities According to Part of Body Affected, in New York State, between July 1, 1925 and June 30, 1926	250
41. Extent of Compensated Disability and Compensation Cost in Temporary Disability Cases in New York State, between July 1, 1924 and June 30, 1925	252
42. Distribution of Temporary Disability Cases and Compensation by Weeks of Disability, in New York State, between July 1, 1923 and June 30, 1925	254
43. Compensated Occupational Disease Cases, New York State, between July 1, 1919 and June 30, 1925	256
44. Cases of Poisoning Compensated between July 1, 1914 and June 30, 1925	257
45. Average Cost Per Case by Kind of Injury, New York State, for Policy Years 1918 to 1923	258
46. Composite New York Schedule "Z" for Policy Years 1918-1923	260
47. Average Workmen's Compensation Premium Cost and Wage Cost per Wage Earner by Industries, between July 1, 1924 and June 30, 1925	262
48. Average Workmen's Compensation Premium Cost and Wage Cost per Wage Earner in all Industries, between July 1, 1914 and June 30, 1925	269
49. Average Workmen's Compensation Premium Cost and Wage Cost per Wage Earner, Individual Industries, between July 1, 1914 and June 30, 1925	269
50. Average Workmen's Compensation Premium Cost and Wage Cost per Wage Earner, Individual Industries, between July 1, 1914 and June 30, 1925	270

TABLE	PAGE
51. Average Workmen's Compensation Premium Cost and Wage Cost per Wage Earner, Individual Industries, between July 1, 1914 and June 30, 1925	270
52. Average Workmen's Compensation Premium Cost and Wage Cost per Wage Earner, Individual Industries, between July 1, 1914 and June 30, 1925	271
53. Average Workmen's Compensation Premium Cost and Wage Cost per Wage Earner, Individual Industries, between July 1, 1914 and June 30, 1925	271
54. Ratio of Workmen's Compensation Premium Costs to Payrolls, by Industries, between July 1, 1914 and June 30, 1925	273
55. Ratio of Workmen's Compensation Premium Costs to Sales, by Industries, between July 1, 1914 and June 30, 1925	273
56. Manual Rates for Each of the Important New York Classifications Compared with Other States	276
57. Present New York Manual Rates for Important New York Classifications Compared with Rates in Ohio and Pennsylvania	280
58. Comparative Benefit Cost of Various Workmen's Compensation Laws of January 1, 1927	283
59. Comparative Death Benefits in Arizona, North Dakota and New York State.	286
60. Permanent Total Disability Benefits in Arizona and New York	286
61. Major Permanent Partial Disability Benefits in Wisconsin and New York	287
62. Compensation for Temporary Total Disability in Twelve States Compared	288
63. Comparison of Benefits of Competitive State Laws in Temporary Disability Cases at Selected Wage Levels and for Various Weeks of Disability	294
64. Comparison of Average Cost per Case by Kind of Injury, Certain States with New York	298
65. Comparison of Theoretical and Experience Cost Differentials between New York and Other States	301
66. Present Manual Rates and Manual Premiums in New York and Pennsylvania, Policy Year 1923	304
67. Comparison of Compensation Costs in New York and Ohio, Policy Year 1923	308

LIST OF TABLES

xvii

TABLE	PAGE
68. Comparison of Ratios of Total Actual Incurred Losses to Premiums at Present Manual Rates, New York and Other States, for the Policy Years 1919-1924	312
69. Comparison of Ratios of Actual Medical Incurred Losses to Premiums at Present Manual Rates, New York and Other States, for the Policy Years 1919-1924	314
70. Comparison of Ratios of Actual Indemnity Incurred Losses to Premiums at Present Manual Rates, New York and Other States, for the Policy Years 1919-1924	315
71. Comparison of Policy Year Indemnity Amendment Factors, New York and Other States, for the Policy Years 1919-1924	316
72. Comparison of Trend of Indemnity Cost Elements Other than Calculated Effect of Amendments to Law, New York and Other States, Policy Years 1919-1924	318
73. Compulsory and Elective Compensation Law, by States, Private Employments	336
74. Forms of Insurance Provided for by States	337
75. Scope of Compensation Laws by States, Private Employments	338
76. Length of Waiting Periods, by States	344
77. Duration of Retroactive Periods, by States	345
78. Maximum Periods of Medical Aid, by States.	345
79. Maximum Amounts Payable for Medical Aid, by States	346
80. Inclusion and Exclusion of Occupational Diseases, by States.	347
81. Types of Occupational Diseases Covered, by States	348
82. Death Cases, Maximum Weekly Payments, by States	351
83. Death Cases, Maximum Percentage of Weekly Wages Payable, by States	352
84. Death Cases, Maximum Aggregate Payments, by States, for Chief Beneficiaries	353
85. Death Cases, Maximum Duration of Payments, by States, for Chief Beneficiaries	354
86. Death Cases, Maximum Payable to Specific State Funds in the Absence of Dependents	355
87. Death Cases, Maximum Payments for Burial Expenses	355

TABLE	PAGE
88. Permanent Total Disability, Maximum Weekly Payments, by States	356
89. Permanent Total Disability, Maximum Percentage of Weekly Wages, by States	357
90. Permanent Total Disability, Maximum Aggregate Payments, by States	358
91. Permanent Total Disability, Maximum Duration of Payments, by States	359
92. Permanent Partial Disability, Maximum Weekly Payments, by States, Cases Other than Dismemberment or Loss of Use	360
93. Permanent Partial Disability, Maximum Percentage of Weekly Wages, by States, Cases Other than Dismemberment or Loss of Use	361
94. Permanent Partial Disability, Maximum Aggregate Payments, by States, Cases Other than Dismemberment or Loss of Use	362
95. Permanent Partial Disability, Maximum Periods for Duration of Payments, by States, Cases Other than Dismemberment or Loss of Use	363
96. Temporary Total Disability, Maximum Weekly Payments, by States	364
97. Temporary Total Disability, Maximum Percentage of Weekly Wages, by States	365
98. Temporary Total Disability, Maximum Aggregate Payments, by States	366
99. Temporary Total Disability, Maximum Duration of Payments, by States	367
100. Administration of Compensation Laws, by States	368
101. Provisions for Computation of Payments, by States	372
102. Special Provisions for Hernia, by States	373
103. Number of Weeks of Compensation Allowed for Loss or Loss of Use of Eye, by States, from Specific Schedules	375

LIST OF CHARTS

CHART	PAGE
1. Comparison of Maximum and Minimum Compensation Benefits for Temporary Disabilities, New York and Chief Competing States	37
2. Premiums Earned by Individual Insurance Companies in New York, 1925	131
3. Employment and Accidents in New York State, 1921-22 to 1925-26	181
4. Cases Indexed for Hearings before Referees in New York State	187
5. Accidents Reported and Cases Compensated in New York, 1915 to 1926	193
6. Number of Compensated Cases, Weeks of Compensation Awarded and Duration of Reported Disability in Excess of 3¼ Weeks, New York State	197
7. Compensated Disability Cases, by Industries, New York State, Fiscal Year Ended June 30, 1924	201
8. Manual Insurance Rates in Selected States, January 1, 1926	244
9. Compensation Premium Cost and Wage Cost per Wage Earner in all Industries, New York State, 1915 to 1926	263
10. Compensation Premium Cost and Wage Cost per Wage Earner in Specified Industries, New York State, 1915 to 1926	264
11. Compensation Premium Cost and Wage Cost per Wage Earner in Specified Industries, New York State, 1915 to 1926	265
12. Compensation Premium Cost and Wage Cost per Wage Earner in Specified Industries, New York State, 1915 to 1926	266
13. Compensation Premium Cost and Wage Cost per Wage Earner in Specified Industries, New York State, 1915 to 1926	267
14. Compensation Premium Cost and Wage Cost per Wage Earner in Specified Industries, New York State, 1915 to 1926	268
15. Compensation Paid for Temporary Disabilities in Various States	290

LIST OF CHARTS

CHART	PAGE
16. Per Cent of Wages Paid for Temporary Disability in Various States	292
17. Comparison of Compensation Cost per Case by Kind of Injury, New York and Competing States, Policy Year 1923	299
18. Index Numbers of Relative Cost of Compensation in New York and Other States	302

THE WORKMEN'S COMPENSATION PROBLEM IN NEW YORK STATE

INTRODUCTION

WORKMEN'S compensation legislation represents the effort of modern society to meet a situation resulting from the high degree of mechanization and extensive use of power characteristic of modern industry. It has been the outcome of a gradual evolution in public opinion with regard to the relation and responsibility of the community and the employer to the wage earner in matters of safety and health.)

Prior to the development of laws specifically defining the employer's liability for injury to his employees in the closing years of the 19th century, the employment relationship was covered by the common law. As interpreted by the courts, the common law recognized no obligation on the part of an employer to an employee injured in his service unless the injury was directly due to the employer's negligence. Thus the relation between employer and employee, or as the legal phraseology has it, between master and servant, was the same as would exist between any two strangers in a case where unintentionally inflicted injury had occurred. Before he could recover damages the injured had to prove before the court that he sustained hurt through negligence of the employer to which he was in no way a contributor.

While this principle may have been just at a time when large scale, mechanized industry had not become prevalent, the gradual increase in complexity of manufacturing processes and the more impersonal employment conditions characteristic of modern industrial organization forced the courts to recognize a special relationship between the employer and those whom he employed. This was done through a series of rulings made by the courts in the effort to remedy

2 WORKMEN'S COMPENSATION IN NEW YORK

the most obvious injustices under the common law, with the result that the positions of the employer and employee in the matter of liability for accidents in employment came to be more specifically defined.

Before this judge-made law the employer had three defenses: (1) the "assumption of risk" defense, by which, briefly, it could be maintained that in accepting employment the employee assumed the risks incident to such employment; (2) the "fellow servant" defense, by which it might be held that the employer could not be liable for injuries caused by the acts of fellow employees if he had used ordinary care in the selection of his employees; and (3) the "contributory negligence" defense, by which the recovery of damages for injuries which were caused in part by the employee's own negligence might be denied. These defenses obviously made it impossible for the employee to collect compensation for any except the clearest case of employer's negligence, and did little to relieve the worker from the hardships which almost inevitably accompanied injury.

EMPLOYERS' LIABILITY LAWS

A further step to this end was taken by the passage of employers' liability laws, which laid down in statutory form certain modifications of the earlier common law liability. The original act, passed in England in 1880, was followed by substantially similar legislation, both federal and state, in the United States, the New York State act being passed in 1902. The general effect of these laws was to limit the common law right of employer and employee, to exempt the former from liability by contract; the fellow servant defense was modified or abolished; the contributory negligence defense was taken away or curtailed; and the duty of providing safety devices was frequently imposed upon the employer.

Despite this more liberal definition of the respective rights of employer and employee in case of injury to the latter, employers' liability laws did not bring any great measure of relief to those whom they were primarily intended to benefit. A fundamental difficulty remained, in that the injured employee had to bring suit in a civil court and was placed at a

distinct disadvantage by the attendant costly and long-drawn-out litigation. His case, as a rule, was necessarily entrusted to an inexpensive and often inexperienced attorney, when not handled by one of the so-called "ambulance chasers"—unscrupulous lawyers who made a specialty of accepting cases for damages upon a commission basis, and who too frequently were guilty of sharp practice in swindling the injured employee of a major portion of whatever award was finally made. On the other hand, the employer was likely to be represented by distinguished counsel, wise in the ways of courts and juries, who could prevent or indefinitely postpone awards in many meritorious cases. Suits of this character were expensive to both parties and to the state. Often there was justice neither to employer nor employee because of the unevenness of jury decisions, for either the damages for which the employer was held liable might be out of all proportion to the injury received or the injured might receive nothing. Perhaps the greatest defect lay in the indefinite postponement of relief to the injured employee, inevitable under civil court procedure. The burden of proof of negligence still remained with the employee.

Although employers' liability acts proved inadequate in relieving the employee from the hardships attendant upon injury, they helped to open the way for legislation which would remedy the defects of the common law. (The passage of such legislation in the form of workmen's compensation laws has been made possible only through the changing attitude toward governmental interference in the affairs of the individual. The greater complexity of relationships in modern life has brought with it the necessity of coping in a comprehensive and systematic way with problems which owe their existence to that very complexity. The individual injured workman in the 18th century was an object for special charity, but in the 20th century accidents in industry became a public problem. Public opinion came to regard the care and rehabilitation of injured workers as a just charge upon the industry in which the accident occurred and, through that industry, upon society. Workmen's compensation laws are the governmental expression of this conviction.)

4 · WORKMEN'S COMPENSATION IN NEW YORK

(The leading argument that has been urged in opposition to the principle of workmen's compensation is that it tends to induce carelessness on the part of the wage earner, since by virtue of it injury does not entail a total loss of income. If the worker is entitled, in addition, to relief from some mutual aid association or fraternal society, his combined benefits may equal or even exceed his wage. Such a situation, or even workmen's compensation alone, may create a temptation to malingering, and that a certain amount of malingering exists is not denied by careful students of workmen's compensation administration. The tendency of workers in some cases to attribute to their employment injuries sustained quite apart from it and their inclination to magnify the causal relationship between the employment and a disease or physical impairment have led some to consider workmen's compensation as merely a disguised form of general health insurance at the expense of the employer. But these instances are not of themselves sufficient to offset the undoubted advantages of the compensation principle.)

DEVELOPMENT OF WORKMEN'S COMPENSATION LEGISLATION

The development of workmen's compensation legislation in the United States has taken place practically within the last two decades. Although the first law of this kind was passed in Germany in 1884, in its present form nearly all of the workmen's compensation legislation in the United States has been enacted since 1910. The most recent enactment, that of Missouri, was ratified by the voters at the election in November, 1926. A number of the present laws have necessitated constitutional amendments, because earlier acts were interpreted by the courts as taking property "without due process of law." At present only Arkansas, Florida, Mississippi, North Carolina and South Carolina are without compensation laws. Table 1 shows the dates on which the original compensation acts of the Federal Government and of the various states and territories became effective.

In New York State the first workmen's compensation bill was introduced in the Legislature in 1898, but was not reported out of the Judiciary Committee. In 1910 two laws were passed, one compulsory, applying to hazardous indus-

TABLE 1: CHRONOLOGY OF WORKMEN'S COMPENSATION LEGISLATION IN THE UNITED STATES

(Source: F. Robertson Jones, "Digest of Workmen's Compensation Laws," 9th Edition, pp. 11, 12.)

Jurisdiction	Law	Effective
United States ¹	Ch. 236, Public Acts of 1908	Aug. 1, 1908
Wisconsin	Ch. 50, Laws of 1911	May 3, 1911
Nevada	Ch. 183, Laws of 1911	July 1, 1911
New Jersey	Ch. 95, Laws of 1911	July 4, 1911
California	Ch. 399, Laws of 1911	Sept. 1, 1911
Washington	Ch. 74, Laws of 1911	Oct. 1, 1911
Kansas	Ch. 218, Laws of 1911	Jan. 1, 1912
New Hampshire	Ch. 163, Laws of 1911	Jan. 1, 1912
Ohio	S. B. 127, Acts of 1911	Jan. 1, 1912
Illinois	S. B. 283, Acts of 1911	May 1, 1912
Massachusetts ²	Ch. 751, Acts of 1911	July 1, 1912
Michigan	Act 10, Extra Session 1912	Sept. 1, 1912
Arizona	Ch. 14, Laws of 1912	Sept. 1, 1912
Rhode Island	Ch. 831, Laws of 1912	Oct. 1, 1912
Texas	Ch. 179, Laws of 1913	Sept. 1, 1913
West Virginia	Ch. 10, Laws of 1913	Oct. 1, 1913
Minnesota	Ch. 467, Acts of 1913	Oct. 1, 1913
Connecticut	Ch. 138, Acts of 1913	Jan. 1, 1914
Oregon	Ch. 112, Laws of 1913	June 30, 1914
Iowa	Ch. 147, Acts of 1913	July 1, 1914
New York ³	Ch. 816, Laws of 1913; Ch. 41, Laws of 1914	July 1, 1914
Maryland ⁴	Ch. 800, Laws of 1914	Nov. 1, 1914
Nebraska	Ch. 198, Laws of 1913	Dec. 1, 1914
Louisiana	Act 20, Acts of 1914	Jan. 1, 1915
Wyoming	Ch. 124, Laws of 1915	Apr. 1, 1915
Montana ⁵	Ch. 96, Laws of 1915	July 1, 1915
Vermont	Ch. 164, Acts of 1915	July 1, 1915
Hawaii	Act 221, Acts of 1915	July 1, 1915
Alaska	Ch. 71, Laws of 1915	July 28, 1915
Colorado	Ch. 179, Laws of 1915	Aug. 1, 1915
Indiana	Ch. 106, Laws of 1915	Sept. 1, 1915
Oklahoma	Ch. 246, Laws of 1915	Sept. 1, 1915
Maine	Ch. 295, Laws of 1915	Jan. 1, 1916
Pennsylvania	Act 338, Acts of 1915	Jan. 1, 1916
Porto Rico	Act 19, Acts of 1916	July 1, 1916
Kentucky ⁶	Ch. 33, Laws of 1916	Aug. 1, 1916
New Mexico	Ch. 83, Laws of 1917	June 8, 1917
South Dakota	Ch. 376, Laws of 1917	July 1, 1917
Utah	Ch. 100, Laws of 1917	July 1, 1917
Idaho	Ch. 81, Laws of 1917	Jan. 1, 1918
Delaware	Ch. 233, Laws of 1917	Jan. 1, 1918
Virginia	Ch. 400, Laws of 1918	Jan. 1, 1919
North Dakota	Ch. 162, Laws of 1919	July 1, 1919
Tennessee	Ch. 123, Laws of 1919	July 1, 1919
Alabama	S. B. 53, Acts of 1919	Jan. 1, 1920
Georgia	Act 814, Acts of 1920	Mar. 1, 1921
Missouri	H. B. 112, Acts of 1925	Jan. 9, 1927

¹ The original act applied only to the relatively few federal employees engaged in hazardous occupations.

(Continuation of footnotes on page 6)

6 WORKMEN'S COMPENSATION IN NEW YORK

tries, the other voluntary. The compulsory law was declared unconstitutional, and a constitutional amendment was necessary before the present law in its original form became effective in 1914.

Workmen's compensation laws have become matters of concern to industry chiefly because of their present cost and the apparently limitless possibilities of increasing cost due to the incessant liberalization of benefits. It is impossible to determine exactly the annual cost of workmen's compensation to the employers of the United States for the reason that in 35 states self-insurance, or the direct payment of compensation by individual employers, is permitted in certain cases, and there is no public record of the volume of these payments. A conservative estimate would place the annual nation-wide expenditures for workmen's compensation well above \$200 millions. In New York State alone in 1925 the cost to employers, exclusive of self-insurers, was more than \$50 millions. No matter what form of compensation insurance may be carried, the annual premiums (or compensation payments in the case of self-insurers) are definite items in the cost of operation, and when these premiums tend constantly to increase, for whatever reason, the employer views these developments with alarm.

Another inevitable cause of dissatisfaction is the inequality of benefits provided under the various state laws. The manufacturer in one state may see his competitor in another state enjoying an advantage because of differentials in benefit

¹ There were provisions in an earlier statute (§§ 136-140 of Ch. 514, Acts of 1909) authorizing voluntary plans of compensation.

² An earlier act, Ch. 352, Laws of 1910, providing for elective compensation, was repealed by Chapter 121, Laws of 1921. Another earlier act, Ch. 674, Laws of 1910, providing for compulsory compensation in certain hazardous employments, was held unconstitutional in *Ives v. South Buffalo Ry. Co.*, 201 N. Y. 271, and repealed by Chapter 816, Laws of 1913.

³ A crude sort of compensation law, Chapter 139, Acts of 1902, was held unconstitutional in *Franklin v. United Railways and Electric Co.*, Court of Common Pleas, Baltimore, 1904—not reported. There was also another earlier local act, Ch. 153, Laws of 1910, providing for insurance of compensation to coal miners in two counties.

⁴ An earlier act, Ch. 67, Acts of 1909, providing for insurance of compensation to coal miners, was held unconstitutional in *Cunningham v. N. W. Improvement Co.*, 119 Pac. 554.

⁵ An earlier act, Ch. 73, Acts of 1914, providing for elective compensation, was held unconstitutional in *Kentucky State Journal v. Workmen's Compensation Board*, 170 S. W. 116, 172 S. W. 674.

schedules, narrower judicial interpretation of the law or differences in administration. If the legislature of his state is contemplating additional increases in benefits, and if still further liberalization may be anticipated in a more remote future, he feels that his situation will become increasingly difficult.

• Probably no subject, so closely affecting both employer and wage earner, is so little understood by both as that of workmen's compensation. In the case of the wage earner this is natural because the complex and technical character of the subject tends to make it incomprehensible except for the general understanding that compensation is due in case of injury during employment. There have been many instances, however, in which employees have displayed remarkable astuteness and knowledge of the law in pressing their claims for compensation.

The failure of the majority of employers to become thoroughly acquainted with workmen's compensation and the legal provisions and administrative practice in their particular states is no doubt due in no small part to the insurance feature. Some employers consider workmen's compensation legislation an unwarranted interference of government in business, while others find the principle sound and just, but think in general that it has been pushed too far. In any case, except where they insure themselves, they pay the insurance company's premium and generally feel that their responsibility is concluded with the signing of the check. If accidents occur in their plants, they know that the insurance company will handle the matter and are usually little inclined to add gratuitously to the pressing administrative problems of their own business which they cannot delegate. Consequently there is a detachment in their attitude toward workmen's compensation, and a lack of intimate knowledge, which are not found in other aspects of industrial relations.

• SCARCITY OF ACCURATE STATISTICS

This situation is at once the result and the cause of the scarcity of accurate statistics covering accidents in relation to exposure. On the one hand there is considerable generali-

8 WORKMEN'S COMPENSATION IN NEW YORK

zation about the increasing hazards and rising trend of accidents in industry, and on the other there is much emphasis upon the potential or actual accomplishments of modern safety methods, but little has been actually proved because the necessary data are lacking. There is a serious need of statistics which will permit the drawing of accurate conclusions regarding actual accident experience, taking into account severity as well as frequency, and this can be done only on the basis of data giving actual exposure and loss of working time in terms of man-hours. To make such figures available on a large enough scale to be convincing, the employers of the country must be willing to furnish the basic data regularly to some central body which can compile the essential figures. Accurate information of this character would undoubtedly stimulate the interest of employers in the subject of workmen's compensation and accident prevention and would provide material for the guidance of legislatures in formulating workmen's compensation legislation.

With full recognition of the inadequacy of the existing data for the purpose of arriving at final or conclusive judgments in regard to any of the more important problems involved in workmen's compensation, an attempt has been made in the following chapters to present a survey of the more significant features of the operation of the workmen's compensation legislation and administrative machinery in the leading industrial state, New York. Though in many of its features New York State presents marked differences from other states, it is felt that a study of the compensation situation in New York cannot but be of interest and value for students of the problem in whatever jurisdiction. The study does not attempt a minute analysis of detail, which in so complex and technical a subject would obscure rather than clarify the picture; it offers, rather, a survey of the more important questions which New York State presents in this regard.

The information presented in this report has been drawn partly from official sources and partly from direct inquiries addressed to employers, casualty insurance companies and other groups in the state. The New York workmen's compensation law has been analyzed in its original form, and its

growth through amendment has been traced. Because of the competitive factor involved in the relative liberality of the compensation laws in the various states, the provisions of the New York law have been compared in detail with those in other states, particularly the leading industrial states which are most generally in competition with New York. Since judicial interpretation may often alter the apparent scope and intent of a law, the influence of judicial interpretation has been traced by a review of appealed cases in order to ascertain what has been the attitude of the courts in such matters as the law's coverage and limitation, and also in rulings upon administrative procedure, such as unmerited and excessive awards, proper acceptance of evidence and prejudice or abuse of power on the part of those charged with making settlements under the law. Particular emphasis has been placed upon the effect which the law has had in the matter of expense to the employer and benefits to the injured employee, since these are subjects of paramount importance in determining the adequacy and liberality of the law. In the investigation of costs and benefits every effort has been made to obtain first-hand, authentic data in order to determine, quite apart from the presumptive effects of the law and its amendments, what has actually been the experience in the twelve years of the law's administration. The subject of workmen's compensation insurance is one of great technical and practical difficulty and in itself could well be the subject of a voluminous treatise. In this report it has been treated only in so far as it bears directly upon the administration of the workmen's compensation law.

CHAPTER I

DEVELOPMENT AND PROVISIONS OF THE NEW YORK STATE COMPENSATION LAW

HISTORY

NEW YORK State was one of the pioneers in the field of workmen's compensation legislation. The first laws of this character, one compulsory, applying to hazardous occupations, and the other optional, were enacted in 1910 and antedated other compensation acts in the United States with the exception of the federal act passed in 1908. The compulsory law was held unconstitutional, and the optional law proved ineffective. Following the declaration of the 1910 law as unconstitutional, the police power of the state was enlarged by the addition to the Constitution of Section 19, which was adopted November 4, 1913 and became effective January 1, 1914. This gave the state increased powers and, as it stands, "overrides section eighteen of article one of the Constitution relative to the right of action to recover damages for injuries resulting in death," thereby paving the way for the passage of another workmen's compensation law (L. 1913, Ch. 816). Because of a technical difficulty it was necessary to reenact this act, and it became effective July 1, 1914.

Original Law

Under the original law of 1913 the administration was supervised and to a large extent administered by a State Workmen's Compensation Commission of five members, appointed by the Governor. It was made compulsory, with compulsory insurance provisions, following the experience with the act of 1910, which was elective in form. The injuries to be compensated were accidental injuries, and no provision was made for occupational disease. Ten days after disability or thirty days after death were the periods per-

DEVELOPMENT AND PROVISIONS OF THE LAW 11

mitted for giving written notice to employer and commission. The waiting period was fourteen days, without being retroactive, and the medical aid provided was to be such as required or requested by the employee, and had a sixty day time limit with no allowance for extension by the commission. In the benefit schedule, the maximum allowed was 66 $\frac{2}{3}$ per cent of the weekly wage, as under the present law, but the weekly limits were a \$15.00 maximum and a \$5.00 minimum. There was no provision for disfigurement, nor for additional compensation in specific injury cases beyond a definite healing period. In death cases where there were no dependents, only burial expenses, then set at \$100, were required, and in computing benefits for dependents \$100 a month was taken as a basic wage. Commutation was allowed even where the amount of future payment was uncertain. There was no provision for vocational rehabilitation, or for second injury, and some of the present penalties were not included, notably the heavy penalty for injury to a minor, illegally employed. Moreover, as the law was worked out, every case was adjudicated by the commission, and all payments were made through the commission.

Growth by Amendment

The original law of 1913 was reenacted and amended by L. 1914, Ch. 41, and since then has been completely amended once (L. 1922, Ch. 615) and amended in part many times. A summary of the amendments made, by subjects and sections of the law affected, number of changes and years when made, is given in Tables 2 and 3. There have been fifty-five amendatory acts, but the number is not in itself of particular significance, when it is considered how many and far-reaching were the changes made by the single Chapter 615 in 1922. Taking into consideration additions, repeals or reenactments, the total number of changes—not counting those in 1914 and 1922, when in each instance the whole law was amended—amounts to one hundred and twenty-five. But these were not all equally important; some made a difference in a word only, or corrected minor errors. By far the greatest number have occurred in Article 2, which deals with the subjects Liability for Compensation, Benefit Scales, Appeals, etc.;

TABLE 2: AMENDMENTS TO THE NEW YORK WORKMEN'S COMPENSATION LAW, 1914-1926, SUMMARIZED¹

Main Divisions of Law	Sections	Changes, i.e., Repeals, Additions, etc.	Years When Made	
I. Definitions and coverage.....	2, with subdivisions	9	1916, 1917, 6 in 1918, 1920.	
	3, with subdivisions	6	1914, 1916, 1917, 2 in 1921, 1924	
II. Compensation, liability, rates.....	11	2	1914, 1916	
	12	2	1917, 1924	
	13	1	1918	
	14a	1	1923	
	15, with subdivisions	12	1915, 1916, 1917, 4 in 1920, 3 in 1924, 1925, 1926	
	16, with subdivisions	6	1914, 1916, 1920, 2 in 1923, 1924	
	17	1	1916	
	18	2	1918, 1926	
	20	7	2 in 1915, 1917, 2 in 1919, 1924, 1925	
	21	1	1923	
	23	2	1916, 1917	
	24	3	1917, 2 in 1920	
	25	5	1915, 1919, 1921, 1925, 1926	
	26	4	1915, 1916, 1921, 1926	
	27	2	1916, 1917	
	28	2	1918, 1925	
	29	3	1916, 1917, 1924	
	30	1	1914	
	33	1	1919	
	34	2	1916, 1920	
35	1	1919		
III. Occupational disease	37-49b	13	all in 1920	
IV. Insurance methods and regulations....	50, with subdivisions	5	1914, 1916, 1917, 1919, 1923	
	52	2	1916, 1926	
	54	2	1916, 1926	
	60	1	1915	
	61	1	1915	
	62	2	1915, 1921	
	63	1	1921	
	65	1	1921	
	66	1	1921	
	67	1	1916	
	75	2	1916, 1921	
	77	2	1916, 1921	
	V. State Insurance Fund	91	1	1921
		92	1	1916
		93	3	1916, 1921, 1926
94		3	1916, 1920, 1923	
95		1	1926	
97 (2 subdivisions)		2	1916, 1917	
100		1	1916	
106		1	1916	
VI. Miscellaneous.....	119	1	1926	
	121	1	1923	
(Total).....		125		

¹ Based on Laws of New York: Tables of Laws Amended or Repealed, vol. 1918, 1920, 1921, 1925. It must be remembered that after 1922 the section numbers are those of the amendatory act and that for this reason the table is valuable only for purposes of computation.

DEVELOPMENT AND PROVISIONS OF THE LAW 13

TABLE 3: EFFECTIVE DATES, AMENDATORY ACTS, NEW YORK STATE WORKMEN'S COMPENSATION LAW

(Source: New York State Department of Labor, Bureau of Statistics and Information, "Workmen's Compensation Law, with amendments, additions and annotations to August 1, 1926," p. 114.)

Year	Chapter	When Effective	Year	Chapter	When Effective
1913	816	Jan. 1, 1914	1921	540	May 3, 1921
		July 1, 1914	1922	615	July 1, 1922
1914	41	Mar. 16, 1914	1923	46	Mar. 12, 1923
		July 1, 1914	1923	334	May 4, 1923
1914	316	Apr. 14, 1914	1923	566	May 21, 1923
1915	167	Apr. 1, 1915	1923	567	May 21, 1923
1915	168	Apr. 1, 1915	1923	568	May 21, 1923
1915	615	May 12, 1915	1923	571	May 21, 1923
1915	674	May 22, 1915	1923	572	July 1, 1923
1916	622	June 1, 1916	1924	317	July 1, 1924
1917	705	July 1, 1917	1924	318	Jan. 1, 1925
1918	249	Apr. 17, 1918	1924	319	July 1, 1924
1918	633	May 13, 1918	1924	320	July 1, 1924
1918	634	May 13, 1918	1924	499	Apr. 25, 1924
1918	635	May 13, 1918	1924	500	July 1, 1924
1919	458	May 5, 1919	1924	658	May 7, 1924
1919	498	May 9, 1919	1925	656	Apr. 11, 1925
1919	629	May 14, 1919	1925	657	Apr. 11, 1925
1920	281	Apr. 19, 1920	1925	658	Apr. 11, 1925
1920	527	July 1, 1920	1925	660	Apr. 11, 1925
1920	529	May 5, 1920	1926	256	Apr. 5, 1926
1920	530	July 1, 1920	1926	257	Apr. 5, 1926
1920	532	May 5, 1920	1926	258	Apr. 5, 1926
1920	533	May 5, 1920	1926	260	Apr. 6, 1926
1920	534	May 5, 1920	1926	261	Apr. 6, 1926
1920	536	May 5, 1920	1926	262	Apr. 6, 1926
1920	538	May 5, 1920	1926	532	Apr. 21, 1926
1920	760	May 13, 1920	1926	533	Apr. 21, 1926
1921	60	Mar. 9, 1921	1926	748	May 3, 1926
1921	539	May 3, 1921			

but there have also been many under the subjects Definitions and Coverage, Article 1, and Insurance Methods and Regulations, Article 4.

In reviewing the amendments by years, some years, such as 1914, may be omitted or commented on briefly, although several amendatory acts were passed.

An important change in administration came in 1915. Instead of having every case adjudicated by the commission and all payments made through the commission, the direct settlement system, whereby the employee and the employer or his agent, the insurance carrier, settled between themselves the amount of compensation to be paid, was set in motion by several amendments. In 1916 the scope of the

14 WORKMEN'S COMPENSATION IN NEW YORK

law was greatly increased by the provision that employers not previously included in the act might, by election with an employee, come under the act, even if the employment was not carried on for pecuniary gain. The list of hazardous employments was increased, and employees not engaged in hazardous employment, but working for an employer whose principal business was a hazardous employment, were included under the act. The thumb, finger, toe and phalanx were added to the list of members, the permanent loss of use of which was to be considered equivalent to the loss of the whole. Compensation not to exceed \$3,500 was provided in case of serious facial or head disfigurement. A section was added providing that an employee who had previously suffered permanent partial disability through the loss of an arm, hand, leg, foot or eye and who incurred total permanent disability through the loss of another member or organ should receive, after the expiration of compensation for the second injury, 66 $\frac{2}{3}$ per cent of his average wage for life. This was to be paid from a special fund created by insurance carriers paying into the State Treasury \$100 for every case of injury causing death where there are no dependents. There were also a number of changes which affected insurance companies, an important one being the provision for an annual assessment of all insurance carriers, including the state fund, to defray the expenses of the Commission for the preceding year.

Again, in 1917, the list of hazardous employments was increased to include employees in insane asylums, reformatories, state hospitals and prisons, and manufacture was made to include all work done in connection with repair of plants, etc., where hazardous employments are conducted. The only other important amendment in this year was the provision that, if the disability continued more than 49 days, the two weeks' waiting period was to be compensated for.

In 1918 hazardous employment was made to include theatrical mechanics and men employed by the state as forest rangers and game protectors; and all other employments not enumerated, where four or more workmen were engaged in the same business or in and around the same establishment, except farm laborers or domestic servants,

DEVELOPMENT AND PROVISIONS OF THE LAW 15

were added. The amendments for this year also provided that the Commission might require a longer period of medical treatment than the sixty days previously allowed.

In 1919, following an investigation which had resulted from the dissatisfaction generally felt with agreements, the direct settlement system was discontinued, and all agreements were required to be examined at a hearing.

In 1920 occupational disease was made an injury compensable under the compensation law. Provision was made for apportioning the compensation among the employers under whom the occupational disease was contracted, if more than one. The maximum weekly compensation for total and partial disability was increased from \$15 to \$20 and the minimum from \$5 to \$8, or the full weekly wage if the wage was less than \$8. Provision was made to pay for maintenance not to exceed \$10 a week for an employee incapacitated for remunerative employment, who was being fitted for work under the State Board of Vocational Education. This money was to be paid from the fund for vocational rehabilitation for which each insurance carrier paid \$900 to the State Treasurer in cases of injury resulting in death, where there are no dependents. The maximum monthly wage to be considered in computing compensation for death was increased from \$100 to \$125.

The most important amendment of 1921 provided that the Industrial Commission of five members and three deputies shall be superseded by an Industrial Commissioner and an Industrial Board of three members with as many referees as necessary. This provided a definite division between the administrative functions, as exercised by the commission, and the judicial functions in reviewing awards intrusted to the Board.

In 1922, Chapter 615 rearranged and reworded the compensation law and made extensive changes. Provision was made to bring under the act employees engaged in interstate commerce who were subject to admiralty or other federal laws, in case the claimants, employer and insurance carrier waive the admiralty and interstate commerce rights, and it was no longer necessary for employees to elect with the employer. The chapter further provided that a contractor

who subcontracts all or any part of work on a hazardous employment is liable for compensation unless the subcontractor has secured compensation for workers. In a case of death without dependents \$1000 was to be paid to the State Treasurer, \$500 applicable in cases of total disability following partial disability and \$500 for vocational rehabilitation, instead of \$100 and \$900 as formerly. Provision was made for medical aid to be furnished an injured workman for as long as should be necessary, rather than for sixty days, subject to extension by the commission. Compensation for 150 weeks, at the rate of 66 $\frac{2}{3}$ per cent of the weekly wage, was provided in the case of loss of hearing of both ears.

The only notable change in 1923 was the increase in the maximum allowance for funeral expenses from \$100 to \$200. But in 1924 there was some increase in the scale of benefits. Compensation for the loss of an eye was increased from 128 weeks to 160 weeks, and for a thumb from 60 to 75 weeks. The monthly maximum wage to be taken into consideration when figuring death benefits was increased from \$125 to \$150. The waiting period was reduced from 14 to 7 days.

Several minor changes were made in the compensation law in 1925 and in 1926. One of the most important is the provision in the 1926 amendment for the State Department of Education to direct the rehabilitation of injured workmen rather than the State Board of Vocational Education as heretofore. Another is the increase in the Industrial Board from three to five members.

PRESENT PROVISIONS

General Coverage

The law as it stands today has a broad coverage. A hurried reading of the amendments shows how the list (Sec. 3, gr. 1-14) of hazardous employments has grown; and in addition the act now includes (gr. 18) "all other employments not . . . enumerated . . . in which there are engaged four or more workmen or operatives regularly. . . ." "This group," to quote from the notes¹ of the Department of

¹ New York State Department of Labor, Bureau of Statistics and Information, "Workmen's Compensation Law, with amendments, additions and annotations to August 1, 1926," pp. 38, 39.

DEVELOPMENT AND PROVISIONS OF THE LAW 17

Labor bulletin, "is constitutional, and with one broad sweep brings within the Workmen's Compensation Law every employee of every 'person, firm or corporation' that engages or employs four or more workmen or operatives regularly . . . thus if a dry goods store has one hundred clerks, two elevator operators and two chauffeurs, the presence of the elevator operators and chauffeurs brings the one hundred clerks within the law's coverage. The words 'workmen or operatives' apply to laborers, mechanics or artisans but not to clerks or persons in professional work." In addition to these private employments, which come under the compulsory feature of the law, provision is made for public employments (gr. 15, 16, 17), and it is possible (gr. 19) for an employer to include an employment not listed by securing compensation. These employments must be carried on "for pecuniary gain . . . except where the employer and his employees have . . . elected. . . ." (Sec. 2, subd. 5). *Pecuniary gain*, according to legal decisions,¹ is dependent, in cases where an "organization not primarily created for business engages in a profit yielding enterprise," on "the disposition made of them (the profits)."

Furthermore, *manufacture, operation and installation* have been extended (Sec. 2, subd. 13) to "include all work done in connection with the repair of plants, buildings, grounds and approaches of all places where any of the hazardous employments are being carried on, operated or conducted." But in determining the scope of a law not only must the employments be enumerated or defined, but the effect of the law in connection with interstate commerce and the admiralty jurisdiction must be considered, as well as the extraterritorial effect. All navigable waters,² craft capable of and designed for navigation of such waters, and the execution of contracts pertaining to such waters and craft, are covered by the admiralty or maritime jurisdiction of the United States and "are subject to such compensation legislation as Congress alone may enact." In interstate commerce "the States³ occupy the field of interstate commerce except insofar as the United States . . . has dispossessed them." Railroad employees injured in interstate commerce are cared

¹ *Ibid.*, p. 14.

² *Ibid.*, Introduction, p. 4.

³ *Ibid.*, p. 6.

18 WORKMEN'S COMPENSATION IN NEW YORK

for by the Federal Employers' Liability Act, but a distinction is made between those employees not engaged in interstate commerce and those who are, the state acts covering the former. Employees not working on railroads but engaged in interstate commerce, such as workers in express companies or for the Pullman service, are also covered by state laws. According to the law of New York State (Sec. 113) the claimant, employer and carrier may all, together, waive their rights of admiralty and interstate commerce. There is no provision for the extraterritorial effect of the law, but the courts have apparently given such effect to the act "where¹ the employee was a resident of the State, or where the contract of employment was made in the State."

COMPENSATION

Liability of Employers

In considering the liability of the employer, the definitions of *employer*, of *employee* and of *injury* are important. The law defines *employer* (Sec. 2, subd. 3) as "a person, partnership, association, corporation, and the legal representatives of a deceased employer, or the receiver or trustee of a person, partnership, association or corporation, employing workmen in hazardous employments including the state . . . etc." For a contractor "who subcontracts all or any part of such contract" the law provides (Sec. 55) that he shall be liable for any employee ". . . unless the subcontractor . . . has secured compensation. . . ." An owner of timber land other than farm land is also liable, by the same section. Again, *employee* is (Sec. 2, subd. 4): "a person engaged in one of the occupations enumerated . . . or who is in the service of an employer whose principal business is that of carrying on or conducting a hazardous employment upon the premises or at the plant, or in the course of his employment away from the plant of his employer." Part of this definition, that which includes the employee "who is in the service of an employer whose principal business is that of carrying on or conducting a hazardous employment," has

¹ F. Robertson Jones, "Workmen's Compensation Law of the State of New York," Revised, May, 1926, with Amendments and Supplementary Laws, p. 10.

DEVELOPMENT AND PROVISIONS OF THE LAW 19

been made clear in the previous discussion of coverage, but the end of the definition, “. . . upon the premises or at the plant or in the course of his employment away from the plant of his employer,” is significant.

“*Injury* and *personal injury* mean only accidental injuries arising out of and in the course of employment and such disease or infection as may naturally and unavoidably result therefrom” according to Sec. 2, subd. 7; and for increased clarity the courts¹ have recognized this definition of accident: “an unlooked for mishap or an untoward event which is not expected or designed,” being limited so that “an act done deliberately and wilfully by a third party may be an accident from the viewpoint of employer and employee.” But the chief difficulties in the definition of *injury* are in the phrases *arising out of* and *in the course of* employment and in determining when injuries are accidental and when they are not. The diseases which are compensable under this definition of injury form a large group and one which gives rise to controversy; indeed, it is a far more troublesome group than the compensable occupational diseases. When dealing with these disease cases, the courts are prohibited (Sec. 20) from reviewing the facts; these they must take as the board or referee, if there has been no review by the board, has found them, and consider only points of law. As practice has developed, accidents² due solely to disease are not compensated, nor are accidents due to illness if that illness was not caused by dizziness due to working at a height. However, as in other states, in many cases³ where diseases are aggravated, accelerated, developed by accident, they are compensated. Nineteen compensable occupational diseases are listed (Sec. 3, subd. 2), column 1 giving a description of the disease and column 2 a description of the process from which it must arise. Disablement from any of these diseases, according to the law (Sec. 38), is treated as an accidental injury.

With these definitions in mind, the provision (Sec. 10) which outlines liability for compensation becomes easier to

¹ New York State Department of Labor, Bureau of Statistics and Information, *Workmen's Compensation Law with amendments, etc.*, p. 15.

² *Ibid.*, p. 23.

³ *Ibid.*, p. 23.

20 WORKMEN'S COMPENSATION IN NEW YORK

understand. "Every employer . . . shall secure compensation to his employees and pay or provide compensation for their disability or death from injury arising out of and in the course of the employment, without regard to fault as a cause of the injury, except that there shall be no liability for compensation . . . when the injury has been solely occasioned by intoxication of the injured employee while on duty or by wilful intention of the injured employee to bring about the injury or death of himself or another." The only new points here are that the employer is not liable if the injury was solely occasioned by intoxication or wilful intention on the part of the employee to injure himself or another, and the employer in every case must prove these faults on the part of the employee. (Sec. 21, subd. 3, 4.)

Waiting Period

The waiting period, so called, is a feature of almost every compensation act. Under the New York law (Sec. 12) no compensation is given for the first seven days of disability, and in this way countless slight injuries are not recompensed beyond the required medical care. But the law has a retroactive clause which requires compensation to be paid for the first seven days of disability if "the injury results in disability of more than forty-nine days."

Medical Aid

The medical aid (Sec. 13) required of the employer is that he shall "promptly provide . . . such medical, surgical or other attendance or treatment, nurse and hospital service, medicine, crutches and apparatus for such period as the nature of the injury or the process of recovery may require." If the employer fails or refuses to provide the required treatment after request, then the employee may secure treatment at the employer's expense, but otherwise the employee must himself pay for additional care which he has himself demanded and secured.

Average Wages

The statute gives (Sec. 14) in some detail the methods for computing the average earnings of an employee. The aver-

DEVELOPMENT AND PROVISIONS OF THE LAW 21

age weekly wages at the time of the injury are taken as the basis, and they are determined in ways dependent on the circumstances of the employment. If the employee was working at the same employment for substantially a year preceding, his average annual earnings are three hundred times the average daily wage, but if he had not worked for a whole year the daily wages of an employee in a similar position who has worked that length of time are taken as typical, and if neither of these methods applies, the previous earnings of the employee are considered as well as those of employees similar in class, employment and neighborhood, in arriving at the average annual wage. The basic weekly earning is then found by dividing the average annual by fifty-two. In connection with this compensation it is well to notice that the definition of wages (Sec. 2, subd. 9) includes, "the reasonable value of board, rent, housing, lodging or similar advantage received from the employer." It is provided also that if the injury befalls a minor, the increase in wage which might be expected may be considered in computing his benefits.

Forms of Disability

Disabilities under all the laws are classified according to the periods they cover and the completeness of the disablement. They are classified as *temporary*, that is, with the possibility of complete recovery, or *permanent* in addition to death cases. *Temporary disabilities* may be either *total* or *partial*, as may *permanent disabilities*, depending on the nature of the injury. This makes in all four kinds of disability, of which the *temporary total* forms the largest group. *Permanent total* injuries are a relatively small proportion of the whole number in every state. *Permanent partial* is important because it includes the specific injuries which are compensated by schedule.

Benefit Schedules

The compensation for these various forms of disability is fixed by law (Sec. 15). The percentage of salary allowed in compensation is $66\frac{2}{3}$ (for both permanent partial and temporary partial, the percentage to be taken is of the wage loss).

22 WORKMEN'S COMPENSATION IN NEW YORK

The maximum and minimum limits a week are \$20¹ and \$8, but in all cases except death, if weekly wage is less than \$8, compensation is the actual wage. There is no time limit set for payments for any injury except in the specific dismemberment schedule, but a monetary limit of \$3500 applies to temporary total and temporary partial cases.²

In cases of permanent partial disability the compensation consists of weekly payments in a percentage of the payments for permanent total incapacity proportionate to the reduction in earning capacity, subject to the limit above mentioned, except that certain dismemberments are compensated according to a specific schedule by payments of 66 $\frac{2}{3}$ per cent of average earnings, subject to the maximum and minimum above mentioned, for number of weeks proportionate to the gravity of the injury, running from 15 weeks for a little finger up to 312 weeks for the loss or total loss of use of an arm. It is provided that loss of use is equivalent to loss by severance always and that cases of partial loss or partial loss of use may be compensated in proportion to the schedule. A facial or head disfigurement (Sec. 15, subd. 3t) is also compensable, with a maximum of \$3500, and it has been decided that "concurrent awards³ may be made, one for serious facial or head disfigurement, and one for disability or loss of earning power," but an "award for disfigurement may not be added to award for permanent total disability." For the employee (Sec. 15, subd. 8) who has previously incurred permanent partial disability because of the loss of hand, foot, etc., and who later becomes permanently disabled because of a second injury, a provision is made whereby he is paid compensation for permanent partial disability and additional compensation for permanent total disability, to be paid out of a special state fund for the remainder of his life.

Death benefits are best considered separately because they are dependent on the number and status of the beneficiaries. For the employee (Sec. 16) without dependents, a sum for burial, maximum \$200, must be paid, and in addition \$1800

¹ In cases of temporary and permanent total disability, the weekly maximum is raised to \$25 by Chapter 558, Acts of 1927, effective Oct. 1, 1927.

² This limit was raised to \$5000 in cases of temporary total and to \$4000 for temporary partial disability by Chapter 555, Acts of 1927, effective Oct. 1, 1927.

³ Workmen's Compensation Law, with amendments, *op. cit.*, p. 55.

DEVELOPMENT AND PROVISIONS OF THE LAW 23

to the state. For the employee with dependents, burial expenses must be paid and benefits ranging from 15% to 66 $\frac{2}{3}$ % of wages for varying periods. A basic monthly wage is taken at not more than \$150. The beneficiaries are restricted to the widow or dependent widower, children, grandchildren, brothers and sisters, parents and grandparents, and they receive compensation for varying periods; the widow or widower until death or remarriage, all children (including grandchildren, brothers, sisters) until they are eighteen and others during dependency. Non-resident alien dependents (Sec. 17) are entitled to full benefits, but they are limited to widow and children, or if no widow or children exist, to one parent, and the compensation may be commuted and paid in a lump sum equal to one-half the present value of the future payments.

ADMINISTRATION OF THE LAW

A written notice (Sec. 18) must be served on the employer and the Industrial Commissioner, containing the name and address of the employee, and stating the time, place, nature and cause of the injury or death, and must be properly signed. This must be done within thirty days after the accident or thirty days after death. A failure to send proper notice bars a claim unless excused by the Board on grounds allowed by law, but the employer and the insurance carrier shall be deemed to have waived notice unless the objection to the failure is raised before the Board on the hearing of the filed claim. Such a claim (Sec. 28) must be made within one year after the accident or death, but the employer and insurance carrier shall be deemed to have waived the bar of the statute unless objection is raised on the first hearing. Moreover, no case where an advance payment is made can be barred by failure to file a claim. It is further provided (Sec. 115) that no limitation of time shall run against any person who is mentally incompetent or a minor, as long as he has no committee or guardian.

Claims for compensation are determined in the following manner (Sec. 20). When, at any time after death or seven days of disability, a claim is presented to the Industrial Com-

24 WORKMEN'S COMPENSATION IN NEW YORK

missioner, the Commissioner or Board makes any necessary investigation and then, on application of either party, orders a hearing. Within thirty days after the claim is submitted or a hearing closed, the Commissioner or Board makes or denies compensation. An important provision is that the decision of the Board is final as to all questions of fact. All awards of the Board draw interest from thirty days after the making thereof.

By statute (Sec. 21) certain presumptions are created in favor of the claimant. They are: (1) that the claim comes within the provision of the law; (2) that sufficient notice was given; (3) that the injury was not occasioned by wilful intention of the employee to injure himself or another; (4) that the injury did not result solely from the intoxication of the injured employee while on duty; and (5) that the contents of verified medical and surgical reports introduced in evidence by claimants for compensation shall constitute *prima facie* evidence of fact as to the matter contained therein. In an occupational disease case (Sec. 47), if the employee was employed in a listed process and his disease is one set opposite the listed process, the disease is presumptively deemed to be due to the nature of the employment. It has been worked out in practice that, "given¹ an accident and a subsequent disability, presumption is that the disability is a consequence of the accident," and that, "given an accident² to the chest and death from pneumonia four days thereafter, presumption is that the disease and death are consequences of the accident."

The Board may at any time review (Sec. 22) any award, decision or order, upon its own motion or upon the application of any party, and may thus make an award changing the compensation previously awarded. But such a review cannot effect an award as regards any moneys already paid, except that an award for increased wages may be made effective from the date of injury.

Beyond and above the awards and decisions of the Board there may be appeals to the Appellate Division of the Supreme Court, third department (Sec. 23). Within thirty

¹"Workmen's Compensation Law with amendments," *op. cit.*, p. 21.

²*Ibid.*, p. 15.

DEVELOPMENT AND PROVISIONS OF THE LAW 25

days after the decision of the Industrial Board, appeals may be taken on questions of law only. The Board may certify questions of law involved in its decision to the Appellate Division or, in other words, the Board has immediate access to the court on questions of law on which it does not wish to make a ruling. Where the decision of the Appellate Division is not unanimous, either party may appeal to the Court of Appeals; if the decision is unanimous, the case may be appealed only with the consent of the Appellate Division or of the Court of Appeals.

It is further provided by Section 123 that the power and jurisdiction of the department over each case shall be continuing, and it may from time to time make such modification or change with respect to former findings, awards, decisions, or orders relating thereto as in its opinion may be just. And it has been worked¹ out that the Board may make this review in spite of a clause in Section 23 which says its decisions shall be final.

Section 24 is concerned with costs and fees. It provides that, if the action taken before a court or Board is held unnecessary, it shall assess the whole cost of the proceedings upon the party who brought them. Claims of attorneys (for claimants may be represented by counsel at the hearings, according to Section 20) and physicians are not enforceable unless approved by the Board. And in order that the claimant may be protected, the solicitation of business of appearing before the Board on behalf of the claimant or the exacting or receiving of a fee or gratuity for any services except in an amount determined by the Board are held to be misdemeanors. If, upon an appeal to the Appellate Division, the award is affirmed, it is payable with interest from the date the Board made such an award.

THE INDUSTRIAL BOARD

*The Labor Law, Chapter 50 of the laws of 1921, substituted for the Industrial Commission of five members an Industrial Commissioner and an Industrial Board—"a quasi-judicial and quasi-legislative body" of three members. These mem-

¹ *Ibid.*, p. 72.

bers (Sec. 12) of the Industrial Board are appointed by the Governor by and with the consent of the Senate for a term of six years, and one of their number is named by the Governor as chairman. The law gives the Board power in addition to making rules and prescribing practice "to hear and determine all claims for compensation under the workmen's compensation law; to require medical service for injured employees, as provided by the workmen's compensation law; to approve claims for medical service or attorneys' fees; to excuse failure to give notice either of injury or death of an employee; to approve agreements, to modify or rescind awards, to make conclusions of fact and rulings of law, to certify questions to the Appellate Division of the Supreme Court, to enter orders in appealed cases, to determine the time for the payment of compensation, to order the reimbursement of employees for amounts advanced, to assess penalties, to commute awards, to compromise actions for the collection of awards, to require or permit employers to deposit the present value of awards in the aggregate trust fund of the state fund, to determine by rule the assignment of a minor's right to sue a third party, to require guardianship for minor dependents, to hear and determine claims under the occupational disease act, to order physical examinations, to take testimony by deposition; and to have and exercise all other powers and duties exclusive of purely administrative functions, originally conferred or imposed upon the workmen's compensation commission by the workmen's compensation law or any other statute."

Because of the volume of work which the administration of the compensation law has placed upon the Industrial Board, an amendment was made in 1926 (Ch. 427) which provides (Sec. 293) that on January 1, 1927, two additional members shall be added to the Industrial Board, making a body of five members instead of three as formerly, one of the new members to represent the employer and one the employee. As soon as practicable, the law provides that two of the members of the Board shall represent the employer, two the employee and one shall be an attorney, qualified to practice in this state.

The law at present provides (Sec. 19) that the Industrial

DEVELOPMENT AND PROVISIONS OF THE LAW 27

Commissioner, who is given (Sec. 21, subd. 2) all the power of a referee to hear and determine cases, shall appoint as many referees as necessary to hear and determine compensation cases and to make such orders, decisions and determinations as are required under the compensation law. The referee's term of office and annual salary are determined by the Commissioner. The decision of a referee is deemed the decision of the Industrial Board from the date of its filing in the Labor Department, unless the Industrial Board on its own motion or on application of either party modifies or rescinds such a decision.

All cases which are appealed to the Board come to the chairman's office for review. The Board may either refuse to reopen the case, refer it back to a referee, or put the case on the Board's calendar for hearing. In many cases the Board requires further evidence to be submitted, and then they are either referred back to a referee or heard by the Board. The Board reviews all cases where a difficult point of law is involved or where a decision of a referee seems not to be founded on the facts, but the Industrial Commissioner may not sit for such reviews (Sec. 22). Where the matter is one of securing further evidence, most cases are referred back to a referee. The Attorney General is the legal adviser for the Board and his opinion is consulted on all points of law. If a compensation case is appealed to the Appellate Division of the Supreme Court, the Attorney General argues it for the Board.

In the administration of workmen's compensation cases under the referee system, the Board is intended as the great safeguard of the employer and employee alike. It acts as a check on the referees and their interpretation of the law, and sees that the decisions are in accordance with the law. Since most cases never come before the Board, those which do are the important controversial ones. The Board is in an advantageous position to watch the working of the law and to recommend necessary legislation.

WORKMEN'S COMPENSATION INSURANCE

The employer has four alternatives in insuring his risk. He may insure in a stock company, a mutual company, the

state insurance fund or he may become a self-insurer. But there are certain general requirements which hold true, particularly when he insures in stock or mutual companies. The first (Sec. 51) is that he must furnish the Commissioner with such information about his policy as the Commissioner may at any time require. In addition (Sec. 54), all policies must provide that the Commissioner may enforce them, that notice to the employer shall be deemed notice to the insurer, that the insolvency of the employer does not release the insurance carrier, that the policies cover the liability, that certain procedure must be carried out in cancelling policies, and that employers or executive officers are not to be included in policies unless they elect. If an insurance carrier accepts a compensation premium he may not plead that the employment is not hazardous or is not carried on for pecuniary gain (Sec. 126).

There are, in addition, certain regulations¹ made by the Insurance Law for stock and mutual companies. "Every corporation or association, except the State Fund, must file with the Superintendent of Insurance its Manual of Classifications and underwriting rules, together with basic rates for each class, and merit rating plans to modify the class rates, which are subject to his approval as to adequacy (Sec. 67). Rate-making associations and insurance rates in general are regulated by Sections 141-141b, Insurance Law, as amended by Chapter 660, Laws of 1922, and by Chapter 436, Laws of 1923. For State Insurance, risks are to be classified and premiums fixed with reference to the differences of industry and hazard, and merit rating is authorized (Sec. 95, W. C. L.). Compensation insurance reserves regulated (Sec. 86 (2))."

For the stock companies there are no additional provisions in the compensation law, but for mutual insurance, state insurance and self-insurance there are several. According to the Insurance Law (Article 5-A), "thirteen² or more persons may incorporate for purpose of insuring compensation on the mutual plan, but may not begin business until annual premiums on insurance applied for amount to \$50,000 and membership is at least forty employers with 2,500 employees, or thirty employers with 5,000 employees or twenty employers

¹ Jones, *op. cit.*, p. 29.

² Jones, *op. cit.*, p. 29.

DEVELOPMENT AND PROVISIONS OF THE LAW 29

with 7,500 employees, or ten employers with 20,000 employees. Reserves must be maintained equal to those required of stock corporations in same class of insurance. Foreign mutual corporations are required to maintain a surplus of not less than \$100,000." The state insurance fund, according to the compensation law (Art. 5), is managed by the Commissioner and advisory committee, and certain reports, reserves and assessments are fixed by law; the Insurance Superintendent supervises the reserves (Sec. 92) and examines the fund (Sec. 105). If an employer in the fund wishes to withdraw, he may do so upon thirty days' written notice, according to section 100. The state fund has the advantage of being able to assure its insurers that they are relieved from liability to employees (Sec. 53). The self-insurer (Sec. 50) must furnish satisfactory proof to the Commissioner of his financial ability to pay such compensation for himself, and the Commissioner may require the deposit of securities in an amount to be determined by him. The Commissioner may also revoke his consent at any time for good cause shown, and may require of the self-insurer that certain commutations be made into the special fund of the state fund, as a condition of his being allowed to remain uninsured.

PROPOSED AMENDMENTS

During 1926, the Industrial Commissioner requested that the Legislature pass forty-five bills affecting the workmen's compensation law. Of these nine were enacted, and they are discussed elsewhere.

Chief among these proposals is the one to make compensable all diseases arising out of employment, instead of using the schedule plan. Under *Benefits* the maximum limit of \$3,500 would be moved to \$5,000 for temporary disability, total and partial; the weekly maximum would be raised to \$25; and funeral expenses would be raised to \$300. It is also proposed to compensate loss of hearing in one ear and a percentage of loss of hearing. For those injured persons whose disabilities were classified erroneously the Board wishes the authority to reclassify—so that justice may be more properly carried out.

30 WORKMEN'S COMPENSATION IN NEW YORK

Of the bills which come under the topic *Compensation Procedure*, it is desired that physicians should no longer be penalized by not receiving payment if they do not submit their reports within twenty days following the first treatment.¹ Another important proposal is a move toward establishing a scientific and authoritative method of measuring loss of vision due to eye injuries.

A very interesting proposal is one which "provides for employers' records of employment and for furnishing of information—to the Industrial Commissioner, (and) is for the purpose of putting the Department of Labor in a proper position to furnish dependable data on two subjects. . . . One is the question of where and what progress is being made in prevention of industrial accidents, and the other is what part of the increasing cost of compensation for accidents is due to change in accident occurrence and what to other factors."

¹ Chapter 553, Acts of 1927, provides that by unanimous vote the Industrial Board may extend this 20-day limit.

CHAPTER II

COMPARISON OF NEW YORK COMPENSATION LAW WITH THOSE OF OTHER STATES

A WORKMEN'S compensation law presumably represents the peculiar requirements of the state upon whose statute books it stands. It is to be expected that, in the drafting of the original law and subsequent amendments, existing conditions are taken into account and the endeavor is made to serve the best interests of the many elements in the state. From this point of view a comparison of the New York compensation law with the provisions of similar laws in other states is immaterial.

From other points of view, however, a comparative study of the provisions of laws in other states may be quite important. The fact can not be ignored that workmen's compensation has added a definite cost to manufacturing expense and that consequently a state whose benefit schedules are particularly liberal may be placing its manufacturers in a difficult competitive position. While the ideal solution of this difficulty might be, as some have suggested, a federal compensation law which would place all employers upon the same footing, the recent trend of public opinion has been definitely against the interference of the Federal Government in matters covered by the police power of the states, and consequently workmen's compensation is likely to remain a matter for state legislation.

Many factors contribute to the relative liberality and costliness of workmen's compensation legislation, and all must be taken into account before any law may be said to be more liberal than another. The injuries and diseases covered by the law, the benefits provided, the maximum weekly payment, the length of the waiting period, the payment of compensation for the waiting period, are leading factors to be considered in appraising the liberality of a law. To facilitate

32 WORKMEN'S COMPENSATION IN NEW YORK

a careful comparison of the New York workmen's compensation law with those in other states, the provisions of these laws have been taken up and classified on the following pages. Other less definite factors, such as the attitude of administration and trend of judicial interpretation, which may exert a powerful influence upon the cost of the law, are not susceptible of such exact comparison.

SUMMARY OF THE RELATIVE LIBERALITY OF THE NEW YORK LAW

This summary of the relative liberality of the New York law is based on comparative tables of the chief provisions in the laws of all the states, and a further intensive analysis of the laws of the states which are most generally in competition with New York industries, namely: Connecticut, Illinois, Indiana, Massachusetts, Michigan, New Jersey, Ohio, Pennsylvania, Rhode Island and Wisconsin. But before entering into a detailed comparison, the extent and possibilities of such a review must be understood. It can show only what the laws provide. In order to get a fair picture of the actual liberality of these laws it would be necessary to study them in operation, to know the temper and bias of those who administer them, and to take into account the industrial background of every state.

It has been pointed out¹ that in examining any compensation law, five main factors must be considered. The first is the universality of the law, that is, its scope or the employments it covers. The second is its inclusion of industrial accidents and occupational diseases. The third is the liberality of the scale of benefits. The fourth and fifth items are administrative: they include the consideration of means for taking care of claims, whether they are "prompt and efficient" and what guarantee is given to assure the payment of claims.

The scope of the New York law is wide, as seen in the preceding chapter, where it was analyzed in detail. New York is among the thirty-two states which include both hazardous

¹L. B. Senior, "Analysis of the New York Compensation Law," notes on a lecture delivered before the New York Insurance Society, December 19, 1924, p. 2.

and non-hazardous industries, as do all the competing states except Illinois. Of these states, twenty-eight exclude those engaged in agriculture, Connecticut, New Jersey, Ohio and Vermont excepted; and twenty-eight exclude domestic servants, Connecticut, New Jersey and Ohio excepted. New York excludes both occupations. New York and five other states exclude employments not carried on for pecuniary gain, while New York and twenty-two other states exclude small employments. The number of employees which defines an excluded small employment varies from fifteen to one; New York's limit is "less than four" in the unenumerated occupations. Other employments, or groups of employees, such as casual labor, outworkers, and those not employed for the employer's business, are excluded in the several states, while in Rhode Island employees receiving more than three thousand dollars a year are excluded. Similar bars on the basis of yearly salary are erected in three other states. The remaining exclusions are scattered and unimportant.

The second factor to be considered—the inclusion of industrial accidents and occupational diseases—can not be fully measured as to relative liberality without further information and detailed study as to the interpretation of the law by courts and commissions. Disabilities, under all the laws, are defined either as *accidents* or *injuries*. The use of the word *injury* will allow for the compensation of disease, adjudged to be caused or intensified by the employment, unless the courts decide against it. New York uses the word *accident* in defining disability, but diseases are compensated by special provision.

In addition to the distinction between accident and injury, certain conditions under which the disability must occur are stipulated. Thirty-eight states, New York among them, provide that the injuries must "arise out of and in the course of employment," while five provide only that injuries must arise "in the course of employment," Ohio and Pennsylvania, of the competitive states, being among the latter. Every state, moreover, imposes certain conditions under which compensation may be withheld. New York, among thirty-two others, will not pay compensation if the accident arises from a "wilful intention on the part of the workman to injure himself or

another." Intoxication is held another condition where payment is not made in New York, as in twenty-seven other states. And there are three additional conditions imposed by other states; sixteen, including Connecticut, Massachusetts, and Michigan of the competitive states, will not pay compensation if the accident results from "wilful misconduct"; thirteen if there has been "violation of safety appliances or the law"; and ten if injuries have been "intentionally inflicted."

Of the forty-three states having compensation laws, eleven include injuries by disease, seven of these being the competitive states, Connecticut, Illinois, Massachusetts, New Jersey, New York, Ohio and Wisconsin. There are two methods whereby diseases are compensated: the first and more inclusive is the blanket method, sometimes called the *Massachusetts plan*; and the second is the schedule plan, since the states which use it enumerate the diseases which they compensate in a schedule or list. New York, New Jersey and Ohio of the competitive states use the latter plan, as does Minnesota. It would be misleading to suppose that the relative liberality of the laws of these states could be judged by the number of diseases on the schedule, for not only do separate states so vary in industry that they have different diseases to cope with, but different numbering systems are used in the lists. Of the "schedule" states, New Jersey lists ten diseases, Ohio fifteen, New York nineteen and Minnesota twenty-three. But if the Minnesota and New York lists are compared, it is found that New York groups all miners' diseases under No. 18 and Minnesota numbers them separately as 17, 18, 19, 20, 21. It must be remembered, too, that while all states compensate for diseases which result from accidents, their relative liberality cannot be measured without a study of their accident statistics and without a knowledge of the interpretation of the law in the courts.

Comparison of Benefit Scales

The benefit scale is more tangible and therefore easier to compare. The first point to be considered in this connection is the waiting period. Under this head New York holds a middle place, being one of the twenty-eight states which have

a waiting period of one week. Of the other states, Oregon and South Dakota have none; four states have only three days, but four others have as long as two weeks. All the competitive states have the one week waiting period except Pennsylvania, which has ten days. New York, in common with twenty-three other states, has a retroactive clause in the sense that compensation is paid for the waiting period if the disability lasts a given number of weeks. In New York and New Jersey the retroactive clause becomes effective after a period of seven weeks. The other twenty-two states which provide for retroactive payments have periods of six, four, three, two and one weeks.

Medical benefits can be compared definitely only to a certain point, for even those states which set limits of time or amount frequently have clauses which give the commissions power to extend either. New York is one of the fifteen, including four competitive states, Connecticut, Illinois, New Jersey and Ohio, which set no time limit; those states which do, set the limit between six months and ten days. Nor does New York limit the amount to be spent for medical attention, and this liberal provision she shares with eighteen other states, six of them the competitive states: Connecticut, Illinois, Indiana, Massachusetts, Michigan and Wisconsin.

When comparing the benefit scale provided by the New York compensation law with the benefit scales in other states, we must bear in mind a number of facts. One of the most important is that the liberality of a compensation law cannot be judged either by the weekly percentage of wages allowed or by the maximum amount, if each item is taken separately, but that a fair estimate can be reached only by taking them all together. In other words, a liberal weekly maximum may be offset by a less liberal percentage allowance of weekly wages. Another important fact to remember is that, while the majority of states use the method of weekly maximum amounts and percentages, a number of states, particularly in the West, compute compensation on a monthly basis or make lump sum payments; and many employ a sliding scale of benefits, depending on age, occupation, but most frequently on the family conditions of the beneficiary. These states are, moreover, notably liberal.

36 WORKMEN'S COMPENSATION IN NEW YORK

Only by keeping these points in mind can one understand or attempt to draw conclusions from the facts which follow or from a perusal of the tables upon which these facts are based.

Instead of discussing the benefit scale by type of disability, it is advisable, for the sake of brevity, to take it up topically under the heads: *per cent of weekly wages, maximum weekly wage, aggregate maximum amounts, and duration of payments.* The 66⅔ per cent used by New York is the highest weekly percentage in effect in compensation laws. It is used by twelve other states, three of which are New York's competing states, Massachusetts, New Jersey and Ohio. Of these twelve states, only Maine, Massachusetts, Minnesota, Missouri, Nebraska, North Dakota and Ohio provide 66⅔ per cent of wages per week for *every* type of benefit, while New York applies the 66⅔ per cent maximum to a monthly basic wage in computing death benefits. The weekly percentages go as low as fifty per cent, with one instance of forty-five per cent for death benefits in Vermont. Idaho does not provide a maximum percentage, but is limited by a maximum amount of \$16.00 a week.

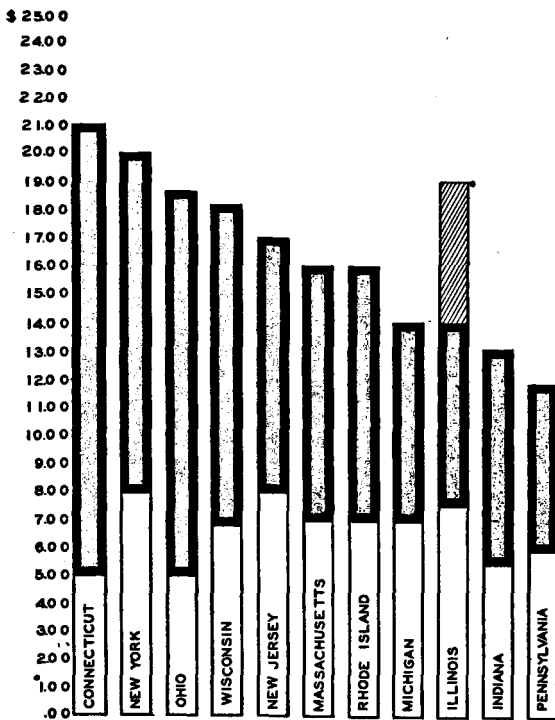
The highest weekly maximum given by any state which bases compensation on the weekly wage is \$21 in Connecticut, closely followed by \$20.83 in California. Arizona provides no weekly limit. New York and five other states, Louisiana, Minnesota, Missouri, North Dakota and Texas, not one of which is a prominent industrial state, have a maximum of \$20 for permanent total, permanent partial and temporary total disability.¹ Death benefits in New York are figured on the monthly basis, \$150 a month being taken as the basic wage, and in this New York is most liberal. The lowest weekly maximum which occurs for any benefit is \$7.50, which is given in Montana for permanent partial disability.

Many states do not set limits for aggregate payments, and this applies to New York, except in the case of temporary disability benefits. Here a maximum of \$3500² is provided for, and this is the lowest allowed in any state which sets such a limit—the highest being \$7200 in Nevada and \$8000 in Wyoming. In death benefits New York is one of twenty-four states which specify no limit; in permanent total dis-

¹ See footnote (1), p. 22.

² See footnote (2), p. 22.

CHART 1: COMPARISON OF MAXIMUM AND MINIMUM COMPENSATION BENEFITS FOR TEMPORARY DISABILITIES, NEW YORK AND CHIEF COMPETING STATES



* \$14.00 TO \$18.00 VARYING WITH NUMBER OF DEPENDENTS

ability, one of fifteen to set no limit of time or amount; in permanent partial disability cases, other than dismemberment or loss of use of limbs, one of five to set no limit of time or amount.

New York is one of the few states which sets no time limit for payments under any of the benefits except in the specified injury schedule and in the case of children in death benefits. With seven other states, Arizona, Minnesota, North Dakota, Oregon, Washington and West Virginia, benefits are paid to the widow or dependent widower during life or until remarriage, in cases of death. New York, Illinois and Ohio are included among the eighteen states which specify no time limit for permanent total disability, but in three of these the aggregate maximum amount is limited. New York is one of the eight states which specify no maximum period for temporary total disability compensation; but in this instance liberality is offset by a low aggregate maximum payment. This serves as an example of how carefully each item must be checked before any conclusions as to the liberality of any law can be drawn.

There are numbers of other fine points which should be weighed and considered before any final estimate of New York's liberality in the benefit scale can be made, and particularly those states which make monthly or lump sum payments should be taken into account. From this survey, however, it is apparent that New York stands always among the highest except in one respect, that of the duration of payments for temporary total disability. In many other states a high percentage of wages is not used as a basis in compensating all disabilities, or is not combined with a high weekly maximum payment; or in many states an unlimited amount is offset by a short period.

Comparison of Administrative Provisions

The fourth and fifth topics to be reviewed are administrative, and though they must be considered in a comprehensive comparison, the whole question of handling claims cannot be completely covered, inasmuch as the laws alone give no clue as to whether the means of handling them are prompt and efficient. In discussing administration it is impossible, more-

over, to draw conclusions without basing them upon hypotheses which may not be well founded. Lists of states which have or have not the agreement system can be given; but the fact that New York abandoned agreements, because they appeared to be working out unfairly for the beneficiary in her experience, does not provide grounds for condemning the system, as it is carried out in other states, as illiberal. There is no doubt, however, about the extreme liberality of the referee system, as administered in New York. By this system every case comes for a hearing before a referee, and accordingly there are fewer loopholes for unscrupulous dealing on either side. Under the agreement system, on the other hand, notices and claims must be adequately checked and followed up to secure justice, and no one who has not studied its operation in a state can tell whether such a system is working out fairly. Thirty-one states, comprising all the principal industrial states, except New York and Ohio, use the agreement system. Ohio, prominent industrially, does not; nor do Nevada, North Dakota, Oregon, Washington, and Wyoming, which are not so important industrially, because they all have monopolistic state insurance, and with these state funds the agreement system is not logically consonant. The practice of these states is not clear from a reading of the laws, but it is doubtful if hearings are held in all cases, although apparently they are held in disputed cases in North Dakota, Washington and Wyoming. New York is, then, the only leading industrial state to use the referee system, which is generally agreed to be very liberal.

Another important administrative feature is the consideration of commutations or lump sum payments. There are really two forms of lump sum payment—one, which may be part of the agreement system and which is a “bargaining process” whereby uncertain future payments are disposed of; and the other, a settlement where there are predictable future amounts due. The first is a survival of earlier methods of administration and is not used in New York, since agreements have been done away with. The second, however, is used in New York, as in all the other states. One difference among the states consists in the check placed by some laws which require that there shall be a lapse of six months from

40 WORKMEN'S COMPENSATION IN NEW YORK

injury or from the date of the first payment, and another consists in the rate of interest specified. The lowest rate is three per cent, used in three states. New York follows alone with three and a half per cent, and the other states specify four, five or six per cent, with Louisiana, charging eight per cent, as the highest.

From the foregoing comparison, New York's extreme liberality, not only among the industrial states, but among all states, is evident. The scope of the law is comprehensive; industrial accidents and occupational diseases are as adequately covered as in any state except those which use the blanket covering; the benefit scale is relatively high; and in administration, New York, by its use of the referee system, is alone among the industrial states. A more exhaustive comparison of the statutory provisions in the laws of the various states is presented in the special series of tables in the Appendix. These tables have been planned to compare the laws, feature by feature, and to group the states which have similar provisions in order to facilitate a comparison of relative liberality by individual provisions.

CHAPTER III

ATTITUDE OF THE COURTS TOWARD INTERPRETATION AND ADMINISTRATION OF THE LAW¹

INTRODUCTION

IN order to provide a basis for judging the soundness of public policy with respect to the development and application of the principles embodied in workmen's compensation legislation, it is necessary to study the problem from many angles. From the point of view of the industrial worker, subjected, by reason of his employment, to special hazards, the success or failure of a compensation law depends upon the adequacy of the compensation provided and the promptness of its payment in case of injury. The socially minded employer shares this point of view, but he is also interested in other aspects of compensation procedure. He wants to know the nature and extent of his liabilities under the law. He wishes to be certain that hearings are fairly and impartially conducted, that fraudulent claims are discovered and rejected, that the awards made are reasonable, and that the burden of responsibility placed upon him is kept within proper limits. These same issues are confronted when the problem is looked at from the social point of view. The relative prosperity of the industries of the several states depends to a great extent upon the comparative burdens imposed under regulatory legislation. If the operation of a state compensation law is of such a character that it adds to the cost of productive activity, the industries of that state are handicapped in their attempt to compete with like industries in other states. If the administration of the law is inefficient or inequitable in its treatment of all of the parties concerned, discredit is cast upon the principles of democratic government.

¹ This chapter is based upon a review of judicial decisions up to the middle of 1926.

42 WORKMEN'S COMPENSATION IN NEW YORK

The cases which have been appealed to the courts under the New York workmen's compensation law furnish a cross-section of the operation of that law which should disclose any element of prejudice or unreasonableness. Although in certain instances cases involving an improper payment of compensation may not be brought before the courts because of the small amount of money involved, it may safely be predicated that no major complaint against the administration of the law or the conduct of the proceedings has remained hidden. An analysis of the court opinions summarizing the facts and criticising or approving the conclusions of the Industrial Board should therefore serve to indicate just how effective and impartial the work of that administrative body has been.

This chapter is an attempt to present such a picture of the administration of the New York workmen's compensation law. Since the cases appealed to the courts represent only a small percentage of the thousands of claims which have been passed upon by the Industrial Board and its predecessors,¹ this analysis of court decisions fails to provide a complete picture of the administrative aspect of the law. It is, rather, a portrayal of the shortcomings of the Board and is intended not as a criticism of workmen's compensation legislation or its administrative application to industrial accidents, but as a basis for the adoption of sound and equitable principles wherever needed.

Although distinctly legal in character, the survey in this chapter does not pretend, moreover, to furnish an exhaustive analysis of the legal aspects of New York workmen's compensation law. It is intended, rather, to furnish employers and other laymen interested in the subject with a simple and concise statement of the legal doctrines applied by the courts in the determination of major controversial issues, supplemented by a presentation of judicial criticism wherever such criticism has been made.

¹ It should be noted that the title of this administrative body, now known as the Industrial Board, has varied under the New York workmen's compensation law. During the first eleven months of its operation, the law was administered by the Workmen's Compensation Commission. This was succeeded by the Bureau of Workmen's Compensation in the Department of Labor and subsequently by the Industrial Board. In the subsequent discussion of individual cases and awards, the title in effect at the time of the award is generally employed.

ATTITUDE OF THE COURTS TOWARD THE LAW 43

PURPOSE AND EFFECT OF THE JUDICIAL REVIEW OF AWARDS

The Industrial Board is an administrative body exercising judicial or quasi-judicial functions. As in the case of similar boards, its decisions are subject, under certain conditions, to judicial review. Appeals from awards or denials of awards may be taken to the Appellate Division of the Supreme Court and subsequently, by consent or in cases where the judgment of the Appellate Division is not unanimous, to the Court of Appeals, which is the court of last resort in New York State. If the case involves any issue arising under the federal constitution, further appeal may be taken to the United States Supreme Court.

In vesting the judiciary with the power to review awards in compensation cases, it was not intended that every decision of the Industrial Board should be carried to the courts. On the contrary, one of the primary objects of the workmen's compensation law was the substitution of a simple procedure for the slow and expensive method of litigation. But the general oversight of the courts was deemed essential to prevent arbitrary and discriminatory rulings and to provide an independent agency for the interpretation of the compensation law. To have permitted the Industrial Board to be the final judge of its own decisions and of the scope and meaning of the provisions of the law under which it functioned would have violated fundamental principles of American government.

In order to prevent unnecessary litigation in the courts, however, the workmen's compensation law provides that "The decision of the board shall be final as to all questions of fact, and, except as provided in section twenty-three, as to all questions of law."¹ In view of the fact that members of the Industrial Board no longer conduct the hearings in compensation cases and, because of the increasingly large number of claims, are unable to review in detail the evidence in every case, the referees have become in effect the final judges with respect to the facts. However, the courts have provided a remedy for the abuse of such power by assuming that a question of law is presented where the referee's findings of

¹ Section 20. In Section 23 it is provided that awards or decisions of the board shall be final unless reversed or modified upon appeal.

fact are unsupported by the evidence in the record. As the court declared in *Kade v. Greenhut Co.*, 193 App. Div. 862, 868 (1920), "It has long been recognized that whether there was evidence to support or tending to sustain a finding of fact is a question of law."¹ Under this doctrine the courts, upon appeal, have examined the record in cases where the findings relative to the facts have been questioned by the appellant, in order to determine as a question of law whether or not there was sufficient legal evidence to support such findings. In reviewing cases, however, the courts have frequently sustained awards where the supporting evidence was not substantial, on the principle that it was not the function of the courts to weigh conflicting testimony unless there seemed to be a preponderance of evidence against the findings made. For example, in *Drazal v. Sanford & Sons*, 203 App. Div. 295 (1922), the court declared, "We think the award is supported by a permissible inference, and a permissible inference is legal evidence." Similarly, in *Cleveland v. Rice*, 209 App. Div. 257 (1924), the justice rendering the opinion expressed the view that, "While the case is not free from doubt, I think the permissible inferences sustain the award."² It has also been held that the credibility of a witness is a question of fact and that its determination should not be disturbed. In *Benjamin v. Rosenberg Bros.*, 180 App. Div. 234 (1917), the court found the evidence unconvincing but held that, "The credibility of a witness is a question of fact and rests with the trier of the facts, and we cannot reverse the award because we believe the testimony is untrue."³

¹ The leading case on the question of evidence under the workmen's compensation law is *Carroll v. Knickerbocker Ice Co.*, 218 N. Y. 435 (1916). See also *Heits v. Ruppert*, 218 N. Y. 148 (1916), in which the court stated that "The decision of the commission is final on all questions of fact . . . and it is presumed in the absence of substantial evidence to the contrary that the claim comes within the provisions of the act . . . but when the undisputed facts in connection with the testimony of the claimant supported by every favorable inference that can be drawn therefrom do not warrant an award, this court will, upon an appeal from a non-unanimous affirmation by the Appellate Division, reverse upon the question of law thus presented."

² See also *Lingest v. Holler & Shepherd*, 178 App. Div. 317 (1917); *Fowler v. Risedorph Bottling Co.*, 175 App. Div. 224 (1916); *La Fleur v. Wood*, 178 App. Div. 397 (1917); *Delso v. Crucible Steel Co. of America*, 195 App. Div. 288 (1921).

³ See also *Banaski v. American Car and Foundry Co.*, 211 App. Div. 820 (1924). The award in this case was unanimously affirmed with opinion as follows: "Per Curiam: Appellant expressly admits that if the claimant told the truth the award is proper. As we are powerless to substitute our judgment for that of the State Industrial Board on an issue of fact the award is affirmed."

ATTITUDE OF THE COURTS TOWARD THE LAW 45

With respect to appeals from the decisions and awards of the Industrial Board, it should be noted that the State Insurance Fund has never carried an appeal to the courts.¹ It is improbable that all the awards in state fund cases have been free from the criticism to which other awards have been subjected upon review. On the contrary, the fact that no appeals are made in state fund cases undoubtedly tends to make the Industrial Board and its referees less cautious in making such awards. Moreover, it is probable that there is less investigation by the state fund to prevent fraudulent claims than in the case of private carriers. Employers insuring in the state fund may now appeal to the courts from an award of the Industrial Board.² Relatively few such appeals, however, have been made, since the employer so insured has little inducement to enter into expensive litigation even though he may consider an award unmerited or improperly made.³

During the period from July 1, 1914 to June 30, 1926, 2587 compensation cases were reviewed by the New York State courts.⁴ The results of these appeals are indicated in the following tables:

APPELLATE COURT	
Awards affirmed.....	1,404
" reversed.....	805
" modified.....	66
Total.....	2,275
COURT OF APPEALS	
Affirmances affirmed.....	190
" reversed.....	71
" modified.....	6
Reversals affirmed.....	33
" reversed.....	12
Total.....	312

It would appear from these figures that the awards made by the various administrative bodies under the law have

¹ See State of New York, Department of Labor, "Special Bulletin No. 140," Albany, N. Y., 1925, p. 238.

² It was held in *Crockett v. International Ry. Co.*, 170 App. Div. 122 (1915), that an employer insured in the state fund could not appeal to the courts. The law was amended, however, in 1917, to permit such appeal.

³ Among such appeals by insurers in the state fund are *Steels v. Paul Smith's Hotel Co.*, 195 App. Div. 39 (1921), and *Gavin v. Calmers*, 206 App. Div. 765 (1923).

⁴ These figures are taken from the testimony of Mr. Edward A. Willoughby before the Industrial Survey Commission, December 9, 1926.

been sustained by one or both courts in approximately sixty-two per cent of the cases appealed. This is, on the whole, a very good showing,¹ which may be attributed, in part, to the liberal attitude of the courts in accepting the original findings of fact, unless clearly contrary to the evidence, and in part to the reasonably conservative and careful interpretation and administration of the law by the Industrial Board and its predecessors.

SCOPE OF THE NEW YORK WORKMEN'S COMPENSATION LAW

The general scope of the workmen's compensation law is indicated in the provisions of the law itself. But these provisions, as in the case of other legislation, have required judicial interpretation to determine their precise meaning and their application in particular cases. The Industrial Board, although empowered to exercise essentially judicial functions, is not primarily a law-interpreting body, and appeal from its decisions on disputed points of law is necessary to the provision of authoritative definition and limitation of the statute which it administers. Such questions as whether or not a particular type of work is covered by one of the specified hazardous occupations or whether interstate commerce is involved are legal questions which only the regularly constituted courts can definitively decide. But at times questions of law require only common sense for their solution. To determine whether or not a given accident arises out of, or in the course of, employment may or may not be difficult. The test of the intelligence and integrity of any administrative body is its ability to make reasonable decisions in cases where no difficult legal issues are involved. In the present analysis of the cases dealing with the general scope of the workmen's compensation law, attention will be directed to those instances where the Industrial Board, or its predecessor, the Industrial Commission, has departed from ordinary common-sense principles, but reference to the leading interpretative cases will also be made in order to indicate in a general way the guiding rules laid down by the courts.

¹In the case of the Federal Trade Commission, for example, the courts have sustained the original decisions in only approximately twenty-five per cent of the cases appealed. See National Industrial Conference Board, "Public Regulation of Competitive Practices," New York, 1925, p. 244.

The Application of the Law to Hazardous Occupations and Occupational Diseases

The New York workmen's compensation law originally covered accidents in a limited number of specified occupations, but its coverage has been extended through amendment to practically all forms of industrial activity. Farm laborers and domestic servants are specifically excluded¹ but may be voluntarily brought under its provisions.² Workers employed by individuals or organizations whose object is not pecuniary gain are not covered, even though the work performed by them is comprehended within the legislative enumeration of hazardous occupation, but these may likewise be protected by voluntary action.³ With these exceptions the compensation law is applicable to practically every type of employment, including not only the numerous occupations specified in the seventeen groups listed under subdivision 1 of Section 3, but also other occupations, such as clerical or office work, which are not ordinarily regarded as hazardous. The inclusion of these non-hazardous employments was brought about by the provision, added by amendment in 1918, extending coverage to all employments not enumerated in the law which are "carried on by any person, firm or corporation in which there are engaged or employed four or more workmen or operatives regularly, in the same business or in or about the same establishment, either upon the premises or at the plant or away from the plant of the employer, under any contract of hire, express or implied, oral or written, except farm laborers and domestic servants."⁴

The effect of this provision is illustrated by the case of

¹ Section 2, Subdivision 4.

² Section 3, Subdivision 1, Group 19. *Queck-Berner v. Macy*, 240 N. Y. 341 (1923); *Caldana v. Buesenburg*, 206 App. Div. 183 (1923); *Fosner v. Morawitz*, 215 App. Div. 176 (1926).

³ *Uhl v. Harwood Club*, 221 N. Y. 588 (1917); *Francisco v. Oakland Golf Club*, 193 App. Div. 373 (1920); *Dillon v. Trustees of St. Patrick's Cathedral*, 234 N. Y. 225 (1922). An employee hired solely for work upon a private house yielding no rentals to the employer is not covered. *Hungerford v. Bonn*, 183 App. Div. 818 (1918). But an employee in a business carried on for pecuniary gain who has been detailed to do work upon the private residence of his employer is entitled to compensation for injuries incurred in the performance of such work. *Jaabeck v. Crane's Sons Co.*, 238 N. Y. 314 (1924).

⁴ Section 3, Subdivision 1, Group 18. The constitutionality of this provision has been upheld by the United States Supreme Court. *Ward & Gow v. Krinsky*, 259 U. S. 503 (1922).

Europe v. Addison Amusements, 231 N. Y. 105 (1921). Europe, a band conductor, was stabbed and killed by a drummer of the band. Although this employment was not included among the enumerated occupations, it was held that the deceased musician was covered by the workmen's compensation law, because the band had in its employ four workmen, namely, a stage manager, two baggage men and a tailor, who regularly accompanied it. But in *Westbay v. Curtis & Sanger*, 198 App. Div. 25 (1921),¹ an award for the death of a messenger boy was reversed and the claim dismissed on the ground that the brokerage firm which employed him did not have four workmen or operatives regularly in its employ. The court pointed out that, "generally speaking, a workman is a man employed in manual labor whether skilled or unskilled, an artificer, mechanic, or artisan, and an operative is a factory hand, one who operates machinery."

In addition to the provision for accident compensation, the workmen's compensation law provides that compensation shall be payable for disability or death resulting from any of the nineteen specified occupational diseases.² The diseases include anthrax and glanders, poisoning by certain metals and chemicals, compressed air illness, miners' diseases and cataract in glass workers. In each instance the law describes the disease and the process or occupation to which it is attributed. In interpreting these provisions it has been held that compensation for a specified occupational disease is payable only when the disease is attributable to the process related to it in the law.³

Definition of Accident

In order to bring a claim within the provisions of the workmen's compensation law it is necessary to show, except in the case of the enumerated occupational diseases, that the

¹ Affirmed by the Court of Appeals without opinion. 232 N. Y. 555 (1921).

² Occupational disease was not covered prior to 1920. The list of such diseases was revised in 1922.

³ An award was denied to an employee suffering from dermatitis alleged to have been caused by dyes and chemicals from wet furs handled by him. It was shown that the dyeing process was completed before the furs reached him and that his particular work did not relate to a "Process involving the use" as specified in the law. This denial was affirmed unanimously without opinion. *Amsterdam v. Hammer & Bros.*, 210 App. Div. 816 (1924).

injury or disability for which compensation is claimed resulted from an accident. In the determination of whether or not a particular injury is accidental, the element of time is important. Disabilities which have developed slowly and cannot be traced to a particular occurrence are not regarded as accidental in origin. For example, in *Woodruff v. Howes Construction Company*, 228 N. Y. 276 (1920), the Court of Appeals reversed an award to a claimant who had a frog felon on the palm of his hand, which he attributed to the constant use of a screw driver.¹ The court found that the "testimony was insufficient to show that the injury was caused by accident." It is also necessary to show that the event or occurrence resulting in disability or injury was unusual or unexpected. In *Lerner v. Rump Bros.*, 241 N. Y. 153 (1925), an award to the widow and children of an employee who died of a complication of grippe, sciatica and endocarditis resulting from a chill received in the refrigerator of his employer's plant, was reversed on the ground that "the exposure, although occurring at a definite time and place, was not catastrophic or extraordinary. It was like the exposure to drafts when one is heated while at work or to the change between the cold and wet outside and the warmth inside, which is not infrequently encountered by the workman after coming to his work in inclement weather."²

In accord with this interpretation of the nature of an accident, the Appellate Division reversed an award to the dependents of the chief operator of the electrical system of a power company who died of heart failure, brought on by the excitement caused by a temporary interruption of power

¹ See also *Jeffrey v. Sayer Co.*, 198 App. Div. 446 (1921). In this case the claimant, employed by a photographer suffered the loss of a finger as a result of poisoning by the chemical solution into which she had dipped her hands in performing her work. She had performed the work continuously for more than a week before the poisoning became evident. The award was reversed on the ground that the contact with the solution was voluntary and that the "injuries resulted from no occurrence which is referable to any particular moment of time which is definite." Affirmed 233 N. Y. 535 (1922).

² See also *D'Olivieri v. Austin Nichols & Co.*, 211 App. Div. 295 (1925). In this case an employee working in a cold storage plant suffered an attack of pneumonia which in turn caused an abscess in his lungs. The court held that "The mere fact that claimant became cold by reason of continuing to work in this room (the employer's ice box) was no accident." On similar grounds the court reversed an award in *Bixby v. Cotswold Comfortable Co.*, 195 App. Div. 659 (1921), to the dependents of an employee who died of diphtheria following exposure in a damp pit.

50 WORKMEN'S COMPENSATION IN NEW YORK

transmission.¹ But awards have been affirmed for death by sunstroke² and for injuries resulting from frostbite.³ In these cases, however, the nature of the employment was found to have made the exposure to weather conditions unusual. It has also been held that infection through an open wound incurred during employment is accidental even though the wound was not received in the course of employment.⁴

Limitation Imposed by the Phrase "Arising Out of and in the Course of Employment"

The workmen's compensation law was enacted to provide recompense for injuries directly related to industrial employment. It was not intended to protect the worker against the ordinary hazards of life not associated with his work. This is indicated in the provision that "'Injury' and 'personal injury' mean only accidental injuries arising out of and in the course of employment and of such disease and infection as may naturally and unavoidably result therefrom."⁵ It is, therefore, one of the duties of referees and of the Industrial Board to determine at the outset in each individual case whether or not the injury received was sufficiently related to the injured person's work to provide a basis for an award of compensation. In the majority of cases this question can be readily answered, but in certain instances it requires recourse to court decisions for guidance.

In the case of an employee injured while performing his customary tasks during the usual hours of employment, there is a presumption that the injury arose out of and in the course of employment. But the difficulty in determining the direct relationship between employment and injury arises when an

¹ *O'Connell v. Adirondack Electric Power Corp.*, 193 App. Div. 582 (1920).

² *Heron v. Holihan*, 182 App. Div. 126 (1918); *Campbell v. Clausen-Flanagan Brewery*, 183 App. Div. 499 (1918). In *Brazzinski v. Crenshaw Engineering Co.*, 188 App. Div. 511 (1919), the case was remitted on the ground that no finding had been made that the deceased came to his death through exposure to heat more excessive than that to which others were subjected or through any special hazard of his employment.

³ *Days v. Trimmer & Sons*, 176 App. Div. 124 (1916); *Quick v. Illston Ice Co.*, 195 App. Div. 676 (1921).

⁴ *Scoville v. Tolhurst Machine Works*, 193 App. Div. 606 (1920), affirmed 231 N. Y. 510 (1921); *Connelly v. Hunt Furniture Co.*, 240 N. Y. 83 (1925).

⁵ Section 2, Subdivision 7.

accident occurs outside of working hours or during periods of temporary leisure, or when the nature of the employment is such that the employee may be alternately or consecutively occupied with his own personal affairs and the business of his employer. Moreover, even the presumption in favor of an employee injured while at work may be overthrown if the cause of the mishap was external to the employment. A brief review of the leading cases involving such complicating circumstances will serve to indicate the interpretation given by the courts to this provision of the law.

Accidents Occurring Outside of Working Hours

The employee who ordinarily performs no duties outside the establishment of his employer and whose hours of labor in the plant are fixed is, nevertheless, covered by the workmen's compensation law not only during the period of actual employment but also during the noon interval and, under certain circumstances, before starting and after quitting work. The decisions with respect to accidents occurring during the noon interval appear to establish the validity of awards for injury resulting from such accidents when they take place upon the premises of the employer and when the employee does not by his own act add to the ordinary hazards of the employer's premises. In *Guyon v. Standard Wall Paper Co.*, 204 App. Div. 851 (1922), an award was unanimously affirmed, without opinion by the court, for an injury to an employee who was hit in the eye by a stick thrown in sport by a fellow employee, while the claimant was resting upon the premises during the noon hour.¹ But an award for injury received upon the employer's premises was reversed where an employee had mounted a ladder to have his picture taken² and where an employee had climbed upon a pile of sheet iron plates.³ An award to an employee injured while eating lunch in the boiler room of the building tenanted by his employer was reversed and the claim dismissed on the ground that the

¹ See also *Domres v. Syracuse Safe Co.*, 211 App. Div. 823 (1924), affirmed 240 N. Y. 611 (1925). In this case the employee was sitting in the doorway of the establishment when he was struck by a truck, not belonging to the employer, which had jumped the curb. Both decisions were rendered without opinions.

² *Stimell v. Remington Typewriter Co.*, 210 App. Div. 311 (1924).

³ *Vranka v. Ward-Leonard Electric Co.*, 214 App. Div. 833 (1925).

premises of the employer, who rented only the first and second floors, did not extend to the boiler room.¹

An accident taking place as the employee is coming to or leaving his work stands upon much the same footing. Ordinarily the accident must occur upon the premises of the employer.² Where the employer provides transportation, however, an injury received in the course of such transportation is assumed to have arisen in the course of employment,³ but this does not apply to the free use by employees of transportation facilities operated by the employer for the public use.⁴ It is also essential that the accident should occur within a reasonable time before beginning or after quitting work. In other words, if the employee lingers or loiters unnecessarily about the premises of the employer the latter's responsibility ceases.⁵

Accidents Occurring Elsewhere than in the Establishment of the Employer

As pointed out in the previous section, the employer is ordinarily responsible only for accidents taking place in his establishment or in its immediate vicinity. But this liability is extended in the case of certain occupations, such as that of traveling salesmen, where the nature of the employment

¹ *Manor v. Pennington*, 180 App. Div. 130 (1917). See also *Jack v. Morrow Mfg. Co.*, 194 App. Div. 565 (1921), in which the claim was remitted in order that it might be determined whether or not the injury was received upon the premises of the employer.

² *DeVoe v. N. Y. State Rys.*, 169 App. Div. 472 (1915). The Court of Appeals in affirming the Appellate Divisions' reversal of this award held that "He was not injured while on duty nor in his working hours nor on his way to or from his duty within the precincts of the company." 218 N. Y. 318 (1916). See, also, *Kiernan v. Friestadt Underpinning Co.*, 171 App. Div. 539 (1916); *McCable v. Brooklyn Heights R. R. Co.*, 177 App. Div. 107 (1917); *Ross v. Howison*, 198 App. Div. 678 (1921); reversed 232 N. Y. 604 (1922). In the last cited case the employee was injured in the hallway of the building in which the employer occupied an upper floor. The Appellate Division reversed the award. The Court of Appeals reversed the Appellate Division on the basis of the dissenting opinion in the lower court in which it was argued that the employer owed to his employees a safe entrance to the place of employment. See also *Cudahy Packing Co. v. Parramore*, 263 U. S. 418 (1923).

³ *Littler v. Fuller Co.*, 223 N. Y. 369 (1918); *Distefano v. Standard Shipbuilding Corp.*, 303 App. Div. 145 (1922).

⁴ *Kowalek v. N. Y. Consolidated R. R. Co.*, 229 N. Y. 489 (1920); *Pierion v. Interborough R. T. Co.*, 184 App. Div. 678 (1918); *Tallon v. Interborough R. T. Co.*, 232 N. Y. 410 (1922).

⁵ *Michelson v. Century Metal S. and S. Co.*, 193 App. Div. 814 (1920); *Adams v. Unalide Asphalt Paving Co.*, 205 App. Div. 784 (1923).

adds no peculiar risks but merely exposes the employee to the ordinary hazards of travel and human intercourse. In such occupations the employee, if accidentally injured, is entitled to compensation if, at the time of the injury, he was engaged in the performance of duties imposed upon him by his employer. For example, in *Harby v. Marwell Bros.*, 203 App. Div. 525 (1922), the court sustained an award to the widow and children of a traveling salesman who was killed while starting out to solicit orders, holding that "A traveling man, working upon commission, begins his work when he leaves his home, or the place where he lives or passes the night, to visit directly a customer."¹ But in *Davidson v. Pansy Waist Co.*, 240 N. Y. 583 (1925), the Court of Appeals reversed an award to a salesman for injury received through slipping in a bath tub,² and in *Kass v. Hirschberg, Schutz & Co.*, 191 App. Div. 300 (1920), the court denied compensation to the dependents of a salesman who was found dead in his hotel room with the gas-jet open.

Employees ordinarily performing work within the establishment of the employer may, under certain circumstances, be compensated for injuries received elsewhere. An accident incurred in the performance of an errand for the employer or any similar outside duty related to employment is compensable. For example, in *Gibson v. New Crown Market*, 208 App. Div. 267 (1924), an award was affirmed to a butcher in a meat market who was injured in an automobile collision while on his way to his place of business, after having made a special trip to secure a customer's order. Likewise in *Gibbs v. Macy & Co.*, 214 App. Div. 335 (1925), it was held that the claimant, a store detective who had been struck by a motor-cycle while walking toward her home, was entitled to compensation because of the fact that her duties had required the special trip to the court from which she was returning. But in *Markowitz v. National Headwear Co.*, 213 App. Div. 461 (1925), an award was reversed on the ground that the

¹ Affirmed without opinion, 235 N. Y. 504 (1923).

² The Appellate Division had previously affirmed the award on the authority of *Sexton v. Public Service Commission*, 180 App. Div. 111 (1917). In the *Sexton* case the claimant, a supervisor of subway construction, was injured while taking a shower bath preparatory to reporting at the office for other duties. The award was affirmed on the ground that "the bath was a necessity arising out of the employment and to enable him to continue it."

employee had been injured when, for personal reasons, he had deviated from the direct route which he should have followed in fulfilling the mission of the employer.

The possession of money belonging to the employer may also bring an accident occurring outside the establishment of the employer within the course of employment. An award was affirmed in the case of a trolley car conductor who slipped and fell, breaking his arm, while on his way to the office to turn in the money taken in during the day.¹ The Appellate Division also sustained an award to the dependents of a collector for a brewery who was shot in a saloon, the shooting having been intentional and for the purpose of obtaining the money belonging to the employer.²

Accidents During Working Hours not Arising Directly Out of the Performance of Customary Work

An accident may occur during working hours but may not arise directly out of the performance of the customary work of the injured employee. The attempted performance of work, other than that specifically required of an employee, sometimes results in accidents. Injuries are also received during periods of temporary relaxation or when the employee is doing something other than his allotted task. Finally, an accident may occur in the course of employment but be due to circumstances external to the employment.

Originally, the character of the work which was being performed when the accident occurred was of peculiar importance in the determination of the question of whether or not an accidental injury arose out of one of the hazardous employments specified in the workmen's compensation law. For example, in *Newman v. Newman*, 169 App. Div. 745 (1915); 218 N. Y. 325 (1916), it was held that the employee of a meat market, who was injured while proceeding on foot to deliver meat to a nearby customer, was not entitled to

¹ *Wilber v. Fonda, Johnstown and G. R. R.*, 208 App. Div. 249 (1924).

² *Spang v. Broadway Brewing & Malting Co.*, 182 App. Div. 443 (1918). See also *Mason v. Scheffer*, 203 App. Div. 332 (1922), in which the court reversed the denial of an award to a collector shot on his own doorstep. There was no evidence that claimant's possession of the funds of his employer was generally known or that robbery was the motive of the shooting. The court appears to have sustained the claim on the ground that the claimant "was out late at night and carried the money by reason of that employment."

ATTITUDE OF THE COURTS TOWARD THE LAW 55

compensation since the injury had "no causal relation to a hazardous employment defined by the act, neither was it incidental thereto." The employee customarily acted as driver of a delivery wagon and also assisted in cutting and preparing meat, both of which occupations were at that time covered by the law. If the accident had taken place when he was doing either type of work, there would have been no question of the validity of an award. Similar distinctions have been made in other cases.¹ The force of these decisions, however, has been greatly diminished by the enlargement of the scope of the law through the addition of other hazardous employments² and more particularly through the adoption of the provision, already discussed, extending coverage to all employments where four or more workmen or operatives are employed.

Although the problem of relating the particular work, being done at the time of injury, to one or more of the employments specified in the law has been rendered less difficult, it is still essential to prove that the circumstances attendant upon an accident during working hours were in some way associated with the duties ordinarily performed by the injured worker. A brief summary of the facts in a few illustrative cases will serve to indicate the distinctions made by the courts.

In *Maladrino v. Southern N. Y. Power & R. R. Co.*, 190 App. Div. 780 (1920), the court affirmed an award to a claimant who was injured while occupied in building a bonfire. The employee was a laborer engaged in loading gravel into wagons. In holding that the building of the bonfire was incidental to this work, the court declared that "Assuming that it was not absolutely essential, it was clearly such a measure of effort looking to the comfort of the men that it would be natural to expect a group of American laborers to require it, and we see no reason for disturbing the conclusions of the State Industrial Commission in this regard." In another somewhat similar case, however, the

¹ *Gleisner v. Gross & Herdener*, 170 App. Div. 37 (1915); *Casterline v. Gillen*, 182 App. Div. 105 (1918). In *Smith v. Price*, 168 App. Div. 421 (1915), putting a horse in its stall was held to be incidental to employment as driver of a truck.

² Subsequent to the decision in the Newman case the law was amended by the inclusion of work in meat markets among hazardous employments.

court reversed an award to the dependents of a riveter who died of burns received as a result of throwing an explosive substance upon a fire which he had lighted in a tub.¹ The riveter already had a fire in his forge, a fact which serves to distinguish this case from the preceding one.

Other cases in which awards have been upheld for injuries resulting from the performance of tasks other than those for which the injured worker was specifically employed, include accidents arising out of the attempted rescue of a fellow workman caught in the cave-in of an embankment,² the offer of assistance by a worker, employed as a syrup boiler, to another employee who was unable to start his elevator,³ and the voluntary delivery to a customer of two boxes of cigars by a cigarmaker.⁴

The causal relationship between an accident and the employment is especially obscure in those cases when the accident occurred while the employee was doing something for his own personal comfort which was not peculiarly required by the nature of the employment. If the act, resulting in accident, was performed in the interest of the employer as well as of the employee, because it was necessary to enable the latter to continue his work without physical discomfort, the courts have ordinarily held that the injury arose out of the employment unless other factors in the situation induced a contrary view.⁵ But in *O'Neil v. Carley Heater Co.*, 218 N. Y. 414 (1916), the Court of Appeals reversed an award to the widow of an employee who, having been seized with illness while he was engaged in the performance of his work,

¹ *Strand v. Harris Structural Steel Co.*, 209 App. Div. 310 (1924).

² *Waters v. Taylor Co.*, 218 N. Y. 248 (1916). But in *Priglise v. Fonda, Johnson and G. R. Co.*, 192 App. Div. 776 (1920), the court reversed an award to the dependents of a flagman, who lost his life while attempting to rescue some children endangered by an approaching train, on the ground that the accident occurred not upon the tracks of the flagman's employer but upon those of a parallel railroad.

³ *Martucci v. Hills Bros. Co.*, 171 App. Div. 370 (1916).

⁴ *Grieb v. Hammerle*, 222 N. Y. 382 (1918).

⁵ *De Filippis v. Falkenberg*, 170 App. Div. 153 (1915); 219 N. Y. 581 (1916); *Etherton v. Johnstown Knitting Mills Company*, 184 App. Div. 820 (1918); *Sator v. Stansbury*, 189 App. Div. 388 (1919); *Burgi v. Hoffman Brewing Co.*, 200 App. Div. 246 (1922); *Elliott v. U. S. Gypsum Co.*, 202 App. Div. 766 (1922); *Reavill v. Royal Baking Powder Co.*, 208 App. Div. 754 (1924). See also *Springer v. North*, 205 App. Div. 754 (1923). In this case the claimant, a teamster, had stopped to purchase some tobacco for his personal use. He had not left his wagon and was injured by the starting of his horses as he was reaching for his purchase which had been brought out to him by the store clerk. The court affirmed the award.

ATTITUDE OF THE COURTS TOWARD THE LAW 57

had taken poison in mistake for epsom salts. The court held that "Decedent's illness and his attempt to minister thereto were not ordinary and natural incidents to his employment. On the contrary, it is found that decedent's mistake was the result of his voluntary action induced by the advice of one who was not even in the employment of his employer but legally was an utter stranger thereto."

An accident caused by circumstances entirely dissociated from the employment and from any act of the injured employee may be related to the employment if the risk could have reasonably been foreseen.¹ In *Bandassi v. Molla*, 200 App. Div. 266 (1922), an award was sustained for the death of a workman killed by the fall of a pipe full of hot emery which was dropped from a separate factory on the eighth floor through the roof of the employer's ground floor establishment.² Several awards have also been sustained for injury or death due to lightning, but in each of these cases the nature of the occupation was such as to involve exposure to the special risk of being struck by lightning.³ In a recent decision⁴ the Court of Appeals discussed at length the problem presented in this type of case. The claimant was injured by the explosion of a shell which was kept upon adjoining premises as a souvenir of the war. Since, as the court pointed out, the accident was "absolutely detached from and foreign to" the claimant's employment, the issue was squarely presented whether or not the fact that the injured worker was by reason of his employment at the place where he was injured, sufficiently established a relationship between the accident and the employment. The Court of Appeals, in reversing the Appellate Division, held that no such relationship was established.

"In conclusion, therefore, however strong may be the economic and sociological arguments in favor of a compensation statute which practically insures the employee against everything except

¹ Injuries resulting from the acts of fellow employees fall into this group but because of the special questions involved are discussed elsewhere.

² Affirmed without opinion, 234 N. Y. 554 (1922).

³ *Madura v. Bronx Parkway Commission*, 206 App. Div. 598 (1923), 238 N. Y. 215 (1924); *Rung v. Bronx Parkway Commission*, 207 App. Div. 879 (1923), 238 N. Y. 556 (1924); *Emmick v. Hanrahan Brick & Ice Co.*, 206 App. Div. 580 (1923).

⁴ *McCarter v. La Rock*, 240 N. Y. 282 (1925).

his own misconduct, we think that this court is thoroughly and justifiably committed to an interpretation of our present statute which requires as the basis for an award a causal connection, apparent to a reasonable mind upon consideration of all the circumstances, between the conditions under which the work is required to be performed and the resulting injury; injury from an accident which need not have been foreseen or expected but which after the event must appear to have had its origin in a risk incidental to the employment and to have flowed from that source as a rational consequence, and that there must be more than a mere location of the employee in the pathway of an accident entirely disconnected from his employment."¹

Definition of Employee

In most instances it is not difficult to determine the status of an injured worker and his relationship to the employer for whom the work was being performed. Occasionally, however, the Industrial Board is confronted with the problem of determining whether or not the injured person was in the service of the employer as an employee. This is particularly true in the case of injury to salaried officials, home workers and persons working under special contracts. A brief examination of some of the leading cases will serve to indicate the basic distinctions made by the courts in defining the term employee.

An applicant for employment is not covered by the compensation law. In *Brassard v. Delaware & Hudson Co.*, 186 App. Div. 647 (1919), the evidence indicated that the claimant had applied for work but had failed to report at the office of assignment. The employer provided him with supper and breakfast. The accident occurred while he was on his way to the dining-car for employees with the intention of getting a mid-day meal to which he was not entitled. The court reversed the award, holding that the claimant was not an employee and that, even if he were regarded as such, he was not injured in the course of employment since he was not going to or from work at the time of injury.²

¹ *McCarter v. La Rock*, 240 N. Y. 282 (1925).

² See also *Lederson v. Cassidy & Dorfman*, 195 App. Div. 613 (1921). In this case the court originally dismissed the claim on the ground that at the time of injury the employer was merely making a test of the fitness of a prospective employee. Subsequently the case was remanded, 197 App. Div. 912 (1921), and upon a renewal of the award with the specific finding that the claimant had been employed, the court affirmed the award without opinion. 204 App. Div. 850 (1922).

ATTITUDE OF THE COURTS TOWARD THE LAW 59

Similarly, persons voluntarily performing acts of friendly assistance do not thereby become employees. The Court of Appeals in *Farrington v. U. S. R. R. Administration*, 228 N. Y. 564 (1920), reversed an award which had been made upon the theory that such action created a relationship of temporary employment. In this case a station agent, unable to close the door of a freight car, called upon a bystander to help him. The bystander responded and injured his finger, the injury subsequently causing his death. The Court of Appeals reversed the award upon the basis of the dissenting opinion of H. T. Kellogg, Jr., in the court below, 190 App. Div. 920 (1919). Justice Kellogg contended that, since there was no offer of pay and since the station agent had no authority to employ labor, the deceased was not an employee.

In the case of contractual relationships differing from the ordinary employment contract, it is frequently difficult to determine whether the injured person was an employee or an independent contractor, in which case he would not be entitled to compensation. The leading case on this point is *Litts v. Risley Lumber Co.*, 224 N. Y. 321 (1918). The deceased had agreed to paint the smokestacks of the lumber company for the sum of \$50.00, the company to supply the paint and pay the wages of an assistant. The Court of Appeals reversed the award and dismissed the claim on the ground that in doing the work Litts had absolute control of himself and his helper, was free to execute it in accordance with his own ideas and was not subject to discharge. In this decision the court indicates the factors which determine the status of an independent contractor.¹ But it has also been held that when an independent contractor was not engaged in the work specified by the contract but was performing an act which the other party was ob-

¹ Awards to independent contractors have been reversed in the following cases: *Prince v. Schwartz*, 190 App. Div. 820 (1920); *Roach v. Hibbard & Gifford*, 193 App. Div. 524 (1920); *Bull v. Estate of Bertelle*, 201 App. Div. 768 (1922); *Adel v. Rubin*, 210 App. Div. 499 (1924); *Daly v. Blount Lumber Co.*, 213 App. Div. 486 (1925).

Awards have been sustained in the following cases: *Peake v. Lakin*, 176 App. Div. 917 (1926), 221 N. Y. 496 (1917); *Abromowitz v. Hudson View Construction Co.*, 188 App. Div. 336 (1919), 228 N. Y. 509 (1920); *Peck v. Tassell & Fairbanks*, 193 App. Div. 604 (1920); *Fancher v. Boston Excelsior Company*, 235 N. Y. 272 (1923).

ligated to perform, he thereby became an employee of the other party.¹

A piece worker doing the work in his own home is not ordinarily regarded as an independent contractor. In *Liberatore v. Friedman*, 224 N. Y. 710 (1918), an award was affirmed to a journeyman tailor who stuck his finger with a needle while he was sewing by hand on an overcoat. Blood poisoning ensued, resulting in permanent injuries. The tailor did the work at home and was paid by the piece. As stated in another case, "If the employer chooses to order work so done as to waive supervision, this does not make the employee less an employee."² This inclusion of home workers, while necessary to provide a remedy for injuries to an important group of wage earners, affords an opportunity for fraudulent claims, since the evidence that an injury occurred while a claimant was engaged upon the work of the employer is usually obtainable solely from the claimant or members of his family. No such cases appear to have been contested on the ground that the claim was fraudulent.

With respect to salaried officials, the workmen's compensation law provides³ that "Employers or executive officers of corporations shall not be included in the compensation insurance contract unless they elect to be brought within the coverage of this chapter. . . ." It is not, however, always easy to distinguish between an executive officer and an employee, particularly in the case of small companies where officials assist in the performance of manual labor. Moreover, prior to 1922, the provision cited above did not include the words "or executive officers," so that, while it was recognized that the compensation law applied only to employees, in certain cases it was difficult to determine whether or not the law provided compensation. For example, in *Bowne v. Bowne Co.*, 176 App. Div. 131 (1916), the claimant was the president and principal stockholder of the company. He was injured while assisting in taking boards through a window. The Appellate Division sustained the award, but was reversed by the Court of Appeals, 221 N. Y. 28 (1917), which held that the short title of the statute, the limitation

¹ *Powley v. Vivian & Co.*, 169 App. Div. 170 (1915).

² *Alied Mutuals Liability Insurance Co. v. De Jong*, 209 App. Div. 505 (1924).

³ Section 54, subdivision 6.

ATTITUDE OF THE COURTS TOWARD THE LAW 61

to employers employing workmen, the evil to be remedied and the obvious incongruity of applying the law to the principal officer, all pointed to a distinction between such officers and other employees. In *Berman v. Reliance Metal Spinning Co.*, 188 App. Div. 876 (1919), an award was upheld to a superintendent, manager and treasurer of the company who had been injured while instructing an employee in the use of a machine. The court held that "It is not the fact that a man is a stockholder and officer of the corporation that determines, it is the character of his employment."¹

Extraterritoriality

The New York compensation law has been construed to apply to accidental injuries received outside the state boundaries, provided certain facts relating the outside employment to a business conducted within the state are established. The leading case on this question is *Post v. Burger & Gohlke*, 216 N. Y. 544 (1916). The claimant in this case was a resident of New York State employed by a sheet metal establishment located in Brooklyn, New York. He was sent to New Jersey to perform certain work and was injured while doing it. The award was contested on the ground that, since the accident occurred outside the boundaries of the state of New York, the claimant was not entitled to compensation under the New York law. The Court of Appeals, however, upheld the award in a decision in which it declared that the legislature had the power to compel a contract between employer and employee which was extraterritorial in effect and that intention to cover accidents outside the state was indicated both by the general purpose of the statute² and by the fact that "an employee

¹ An additional circumstance in this case was the fact that the claimant was included in the insurance contract as superintendent or manager of the plant. See also *Wrist v. Baker-Wrist Packing Box Co.*, 201 App. Div. 97 (1922); 236 N. Y. 521 (1923), in which an award to a secretary, treasurer and general manager was reversed on the ground that the claimant was seeking protection for which the company did not pay the carrier.

² The court on this point expressed the view that "It was the intention of the Legislature to secure such injured workmen and their dependents from becoming objects of charity, and to make reasonable compensation for injuries sustained or death incurred by reason of such employment a part of the expense of the lines of business included within the definition of hazardous employments as stated in the act. . . . The danger of injured workmen and their dependents becoming objects of charity is just as great when an accident occurs outside the boundaries of the state as it is when it occurs within the state."

62 WORKMEN'S COMPENSATION IN NEW YORK

as defined by this act, includes a person engaged in the course of his employment away from the plant of the employer.”

Other decisions have served to limit and define the extra-territorial effect of the compensation law. In *Jenkins v. Hogan & Sons*, 177 App. Div. 36 (1917), the Appellate Division sustained an award to a claimant hired in New York for work in New Jersey although he had been persuaded to accept compensation under the New Jersey statute.¹ In *Smith v. Heine Boiler Co.*, 224 N. Y. 9 (1918), an award was reversed by the Court of Appeals on the ground that the contract of employment was made before the enactment of the New York workmen's compensation law and that no hazardous business was transacted in New York by the employer at the time of the accident. The employer, in this case, was a Missouri corporation with a sales office in New York City. The accident occurred in Maine. This decision was the basis of a reversal of an award by the Appellate Division in *Perles v. Lederer*, 189 App. Div. 425 (1919), in which it appeared that the claimant had made a contract with an agent of the employer at an employment office in New York City for services to be performed at Forest Park, Pa. Similarly in *Donohue v. Robertson Co.*, 205 App. Div. 176 (1923), the award was reversed and the claim remitted for determination of the question of whether or not the employment outside the state was incidental to a business conducted within the state. The claimant, who had no permanent place of residence, had been hired by a Pennsylvania concern for work in various places. The contract of employment was found to have been made in New York; the accident occurred in Washington, D. C. The court held that the place of the contract was not necessarily controlling and that “The real question in the case is whether at the time of the accident the employer was carrying on a hazardous employment within the State of New York and whether the claimant suffered an injury incidental to that employ-

¹ See also *Gilber v. Des Lauriers Column Mould Co.*, 180 App. Div. 59 (1917). In this case the claimant originally made application under the New Jersey statute and received some payments under that act. It was held that this did not deprive him of the right to enforce his claim under the New York law, provided the carrier was credited with payments already made.

ment though suffered in another state."¹ In conformity with this proposition, awards have been confirmed unanimously and without opinion in two cases involving accidents outside the state when the contract of employment was made outside the state, but where the employer's principal place of business was in New York.²

Interstate Commerce

In the field of interstate commerce the jurisdiction of the New York Industrial Board is restricted by the fact that the Federal Employers' Liability Act takes precedence over state legislation. Under the Federal Constitution, as interpreted by the Supreme Court, the states may regulate commerce within their boundaries, even when it is interstate in character, in so far as the Federal Government has failed to assume control. With respect to accidental injuries in this field Congress has, however, partially dispossessed the states of the power to provide compensation.

Originally it was held that the Federal Employers' Liability Act, which applies to railroad employees engaged in interstate commerce, did not cover accidents not involving negligence on the part of the employer and that, therefore, the New York Industrial Board could make awards for such injuries. In accordance with this theory, compensation was awarded to an employee of the New York Central Railroad who was struck in the eye by a pebble while tamping cross-ties. This award was affirmed by the Appellate Division of the Supreme Court³ and by the Court of Appeals.⁴ But the United States Supreme Court reversed these decisions and held that the Federal Employers' Liability Act was the exclusive remedy for all accidental injuries incurred by railroad employees in interstate commerce.⁵

Since the provisions of the federal act in question apply only to railroad employees, the states may provide com-

¹ See, also, *Anderson v. Chambers Co.*, 210 App. Div. 543 (1924); *Johnson v. Steer*, 214 App. Div. 829 (1925).

² *Mazzella v. Overseas Shipping Co.*, 210 App. Div. 803 (1924); *Hoffman v. Syracuse Portrait Co.*, 215 App. Div. 743 (1925).

³ *Winfield v. New York Central Railroad Co.*, 168 App. Div., 351 (1915).

⁴ *Ibid.*, 216 N. Y. 284 (1915).

⁵ *New York Central Railroad Co. v. Winfield*, 244 U. S. 147 (1917).

pensation in other fields even though interstate commerce is involved.¹ Awards to employees of sleeping car and express companies have been made under the New York workmen's compensation law and have been confirmed by the courts.²

In regard to railroad employees, the essential question in each case is whether or not the accident was related to interstate commerce. The mere fact that a railroad operates in more than one state or carries interstate shipments over its lines does not deprive its injured employees of compensation under the state law. The test is, "Was the employee at the time of the injury engaged in interstate transportation or in work so closely related to it as to be practically a part of it?"³ The application of this test can best be shown by a brief statement of the facts in some of the leading cases which have been passed upon by the courts.

In *New York Central Railroad Co. v. White*, 243 U. S. 188 (1917), the United States Supreme Court held that the work of a night watchman charged with guarding tools and materials, intended to be used for the construction of a new station and new tracks of an interstate railroad, bore no direct relation to interstate transportation. Likewise, an award to a railroad employee was confirmed by the New York Court of Appeals upon the finding that he was engaged in new construction work.⁴ The operation or repair of a coal pocket has also been held to be unrelated to interstate commerce.⁵ In *Plass v. Central New England Railroad*, 226 N. Y. 449 (1919), a section laborer who died from ivy poisoning, contracted while he was mowing grass on the right-of-way of the railroad, was found to be performing his work under a state law which required the removal of weeds from railroad property at specified times during the year, and the award to his dependents was sustained.⁶ Awards have also been

¹ *Wells Fargo & Co. v. Taylor*, 254 U. S. 175 (1920).

² *Bryant v. Pullman Co.*, 188 App. Div. 311 (1919); 228 N. Y. 579 (1920); *Freitag v. American Express Co.*, 809 App. Div. 209 (1924); 239 N. Y. 529 (1924).

³ *Shanks v. Del. L. & W. R. R. Co.*, 239 U. S. 556, 558 (1916).

⁴ *Otterstadt v. Lehigh & H. R. Ry. Co.*, 234 N. Y. 203 (1922).

⁵ *Gallagher v. N. Y. Central R. R. Co.*, 223 N. Y. 571 (1917); *Haley v. Boston & Albany R. R.*, 225 N. Y. 669 (1919).

⁶ Witnesses for the railroad attempted to prove that the work was intended to prevent grass and weeds from getting on the rails and stalling the trains. The court expressed the view that "These witnesses for the railroad company, in view of all the circumstances, could reasonably be charged with some exaggeration."

ATTITUDE OF THE COURTS TOWARD THE LAW 65

sustained in the case of a plumber killed while he was crossing tracks for the purpose of inspecting the plumbing beneath a station,¹ and in the case of a laborer fatally injured by a fall from a hand car on a spur track of an intrastate railroad.²

On the other hand, a number of awards under the New York workmen's compensation law have been reversed because the killed or injured employee was engaged in interstate commerce. In *New York Central Railroad Co. v. Porter*, 249 U. S. 168 (1918), the United States Supreme Court reversed an award to the widow of a section hand, struck by an engine while shoveling snow, on the ground that the tracks at the point where the deceased was working were used for interstate commerce. In *Quirk v. Erie Railroad Co.*, 235 N. Y. 455 (1923), the New York Court of Appeals reversed an order of the Appellate Division affirming an award to a track laborer injured by a passing train while cleaning up a railroad yard. The duties of the laborer included the cutting of grass on the right-of-way and picking up scrap metal and other obstructions on the tracks. The Appellate Division had affirmed the award upon the theory that his injury occurred while he was cutting grass and that this work had no relation to interstate commerce. The Court of Appeals took the view that the nature of his work as a whole was similar to that of a watchman guarding against accidents and that, since interstate traffic passed over the tracks in question, interstate commerce was involved. The denial of awards has also been confirmed in cases where injury was incurred while switching cars received from outside the state,³ and while cleaning out the fire boxes of engines used in interstate commerce.⁴

¹ *Volmers v. N. Y. Central R. R.*, 223 N. Y. 571 (1918).

² *Liberti v. Staten Island R. R. Co.*, 180 App. Div. 90 (1917); 223 N. Y. 682 (1918). Other cases in which injuries to railroad employees have been held to have occurred outside of the field of interstate commerce include the following: *Gingliano v. Lehigh Valley R. R. Co.*, 224 N. Y. 713 (1918); *Fish v. Rutland R. R. Co.*, 189 App. Div. 352 (1919); *Saccomanno v. Grasse River R. R. Corp.*, 229 N. Y. 625 (1920).

³ *Gattoni v. N. Y. Central R. R. Co.*, 192 App. Div. 927 (1920); 230 N. Y. 594 (1921). See also *Gehan v. N. Y. Central R. R. Co.*, 205 App. Div. 554 (1923); 240 N. Y. 549 (1925).

⁴ *Salvo v. N. Y. Central R. R. Co.*, 216 App. Div. 592 (1926). Other cases in which accidents have been held to be related to employment in interstate commerce include: *O'Brien v. Pa. R. R.*, 187 App. Div. 839 (1919); *Kinsella v. N. Y. Central R. R.*, 186 App. Div. 856 (1919); *Dade v. N. Y. Central R. R.*, 210 App. Div. 508 (1924); *Sceffo v. Buffalo, Rochester & Pittsburgh Ry. Co.*, 211 App. Div. 243 (1925); *Stone v. N. Y. Central R. R. Co.*, 211 App. Div. 638 (1925).

Admiralty or Maritime Cases

The Constitution of the United States gives to the judicial branch of the Federal Government exclusive jurisdiction over all admiralty or maritime cases. This jurisdiction covers navigable waters, including lakes, rivers or canals which form a continuous highway for interstate or foreign commerce, craft designed for the navigation of such waters and the execution of contracts pertaining to such waters and craft. Congress has twice attempted to give to the states the power to apply the provisions of state compensation laws to maritime workers injured within their borders. The earlier act, 40 Stat. 395, Ch. 97, dated October 6, 1917, sought to authorize the application of the workmen's compensation laws of the several states to all injuries suffered by employees engaged in maritime work. This legislation was declared unconstitutional by the United States Supreme Court in *Knickerbocker Ice Company v. Stewart*, 253 U. S. 149 (1920). Subsequently Congress attempted to limit the federal admiralty jurisdiction to the masters and crews of vessels, but this act, 42 Stat. 634, Ch. 216, dated June 10, 1922, was likewise adjudged unconstitutional in *State of Washington v. Dawson*, 264 U. S. 219 (1924), in which the Supreme Court declared that Congress may not delegate to the states the power to alter or revise maritime law.

The New York workmen's compensation law, as amended in 1922, provides that awards may be made by the Industrial Board in cases where the claimant, the employer and the insurance carrier waive their admiralty rights.¹ The validity of this provision is open to question. In *Christenson v. Morse Dry Dock and Repair Co.*, 216 App. Div. 274 (1926), the court sustained an action for damages for injury incurred in connection with the repair of a steamship, although the injured employee had voluntarily signed an agreement waiving his admiralty rights in case of injury. It was held that jurisdiction could not be conferred upon a tribunal by consent and that the optional provision of the compensation law attempted to change maritime law.²

¹ Section 113.

² See, however, *Holland v. Atlantic Stevedoring Co.*, 210 App. Div., 129 (1924), in which a similar waiver was held to be a valid defense against a suit for damages.

ATTITUDE OF THE COURTS TOWARD THE LAW 67

Certain occupations, particularly that of longshoreman, are closely related to maritime transactions. Accidents in such occupations may or may not be covered by the state compensation law, depending upon the character of the work being performed and the place where the injury occurred. In the case of *State Industrial Commission of New York v. Nordenholt Corp.*, 259 U. S. 263 (1922), the United States Supreme Court held that a longshoreman injured on a dock might be awarded compensation under the New York workmen's compensation law, since "there is no pertinent federal statute; and application of the local law will not work material prejudice to any characteristic feature of the general maritime law."¹ This conclusion was reached on the basis of the distinction between contract matters and tort matters, admiralty jurisdiction over the latter depending primarily upon the locality.²

The application of the compensation law to cases of this kind involves the determination of the place at which the accident occurred and the application of the legal distinctions between accidents on land and in admiralty. In *Campanile v. Morse Dry Dock and Repair Co.*, 205 App. Div. 480 (1923), it was held that injury on a dry dock afloat in navigable waters came under admiralty jurisdiction.³ In *Butler v. Robins Dry Dock and Repair Co.*, 240 N. Y. 23 (1925), the Court of Appeals held that the fact that the dock was a "graven dock" permanently built into the land, did not serve to take a case of injury therein out of admiralty jurisdiction.⁴

¹The award had previously been reversed by the New York courts. *Insano v. Nordenholt Corp.*, 193 App. Div. 1 (1920); 232 N. Y. 507 (1921).

²"When an employee working on board a vessel in navigable waters, sustains personal injuries there, and seeks damages from the employer, the applicable legal principles are very different from those which would control if he had been injured on land while unloading a vessel. In the former situation the liability of employer must be determined under maritime law; in the latter, no general maritime rule prescribes the liability, and the local law has always been applied."

³This was a suit for damages. See also *Danielson v. Morse Dry Dock & Repair Co.*, 235 N. Y. 439 (1923), another suit for damages in which the injury suffered by the plaintiff was received while he was engaged in repairing a ship in dry dock.

⁴The employee had been engaged in putting plates on a vessel's hull and had left his work temporarily to go up the side of the dock when a plate fell on him and killed him. An action for damages was dismissed in the Trial Term and by the Appellate Division on the ground that the character of the dock took the case out of admiralty jurisdiction. These judgments were reversed by the Court of Appeals which held that since it was settled that a vessel floated into such a dock is still in navigable waters, even though the water has been temporarily withdrawn, the dock itself must be regarded as navigable water.

68 WORKMEN'S COMPENSATION IN NEW YORK

Under certain circumstances, even an injury upon a vessel may be brought within the scope of the compensation law. In *Lasen v. Newburgh Shipyards*, 199 App. Div. 797 (1922), an award was affirmed to a claimant who was injured while working on the hull of a ship which had been launched while in process of construction and was floating in a wet basin. The court held that a contract for building a ship was not maritime, and that therefore the case did not come under admiralty jurisdiction. A somewhat similar situation existed in *Maddens v. Fox Film Corp.*, 205 App. Div. 791 (1923). In this case the claimant, while performing as a motion picture actor upon the edge of a boat tied to a pier, tripped and fell into the Hudson River. The court upheld the award of compensation on the ground that the mere fact that an accident occurred on a boat did not show conclusively that it was under admiralty jurisdiction, and that in this case no relation to maritime matters was shown.

THE EMPLOYER'S RESPONSIBILITY FOR ACCIDENTS DUE SOLELY TO THE FAULT OR NEGLIGENCE OF OTHERS

The workmen's compensation law has made it impossible for the employer to plead contributory negligence on the part of the employee as a defense.¹ The social expediency of the overthrow of that long established common law doctrine is no longer open to question. Nevertheless, it must be recognized that compensation awards are unmerited and impose an unjust burden upon employers when injury is due solely and entirely to the fault or negligence of the injured worker. Some protection against such awards is provided under the New York workmen's compensation law as it has been construed by the courts. Awards have been reversed in several instances where the facts indicated that injury or death was not due to an occupational accident but resulted from the negligent or wrongful acts or the intemperance of the employee. The usual ground upon which such cases have been reversed has been the judicial determination that the circumstances under which the accident occurred showed

¹ *Winfield v. N. Y. C. & H. R. R. Co.*, 216 N. Y. 288 (1915); *Ross v. Genesee Reduction Co.*, 180 App. Div. 846 (1917); *Bylow v. St. Regis Paper Co.*, 179 App. Div. 555 (1917); *New York Central R. Co. v. White*, 243 U. S. 188 (1917).

ATTITUDE OF THE COURTS TOWARD THE LAW 69

that it did not arise out of and in the course of employment. Various cases of this kind are discussed in the following sections.

Disobedience of Orders

The leading case involving injury due to the disobedience of orders of the employer is *Mecechko v. Bowen Mfg. Co.*, 179 App. Div. 573 (1917). In this case it appeared that a machine operator had attempted to remove some small pieces of steel from an automatic press while it was in operation, with the resultant loss of four fingers. A rule of the company prohibited the operators from putting their hands within the press while it was in operation. The Appellate Division affirmed the award, holding that—

“In the case at bar the prohibition was not one which limited the sphere of the claimant's employment, but simply dealt with his conduct within the sphere of his employment in operating the press. . . . The act which he did was no different in kind from that which he was employed to do, but he did it in a prohibited and very likely thoughtless manner.”¹

In line with this decision it has been held that employees injured while attempting to do work, other than that for which they were hired and contrary to orders, were not entitled to compensation on the ground that the injury did not occur in the course of employment.² Likewise, the performance of other unauthorized and forbidden acts, such as the operation of an elevator, tends temporarily to take the employee out of his customary employment and debars the recovery of compensation if accident occurs.³ But awards

¹ See also *Fox v. Truslow and Falls*, 204 App. Div. 585 (1923); 206 App. Div. 725 (1923); 236 N. Y. 634 (1923), in which an employee required to clean her machine was shown to have been injured while cleaning the machine in motion, contrary to orders. The award in this case was affirmed. *Kelly v. National Packing Box Co.*, 204 App. Div. 614 (1923). In this case the claimant, a fireman in a box factory, had been authorized by his immediate superior to open a valve on his boiler although previously told by the chief engineer not to touch it. On this ground and because the opening of the valve was related to his regular duties, the court upheld the award.

² *Yodakis v. Smith & Sons Carpet Co.*, 193 App. Div. 150 (1920), 203 N. Y. 593 (1922); *Burch v. Ramapo Iron Works*, 210 App. Div. 506 (1924); *Johnson v. Seaburg Mfg. Co.*, 211 App. Div. 241 (1925).

³ *McQuibney v. International Ry. Co.*, 210 App. Div. 507 (1924); *Hamberg v. Flower City Specialty Co.*, 202 App. Div. 113 (1922); *Elberman v. Walker Co.*, 209 App. Div. 248 (1924).

have been upheld in cases where the employee's disobedience was unconscious¹ and where the evidence indicated a lack of enforcement of the rules by the employer.² These decisions, while they have not entirely relieved the employer of responsibility for the results of wilful disobedience of orders on the part of his employees, have served to restrict the award of compensation, under such circumstances, to cases where the employee's misconduct was directly related to the work to which he was assigned.

Assault by Fellow Employees or Outsiders

Although the employer may be in no way connected with assaults upon his employees by their fellow employees or by outsiders, he may under certain circumstances be held responsible for the payment of compensation if injury results from such assaults. This additional burden, imposed upon the employer by the workmen's compensation act, has been justified upon the ground that under the common law the application of the fellow-servant doctrine was unduly severe upon workers who were injured through the acts of their fellows in the course of employment. As stated in the majority opinion of the Court of Appeals in *Verschleiser v. Stern and Son*, 229 N. Y. 192 (1920):

"It may seem harsh and arbitrary to impose liability upon a master for an assault committed by a workman upon a co-workman, but the purpose and intent of the statute is to fix an arbitrary liability in the greater public interest involved."

In determining the responsibility of the employer in this type of case, the chief issue is whether or not the assault arose out of and in the course of employment.³ Although in some instances the views of the courts have been at variance with those of the Industrial Board and its predecessors, the

¹ *Greency v. Haberle-Crystal Springs Brewing Co.*, 190 App. Div. 785 (1920).

² *Arthambald v. Lake Champlain Pulp and Paper Co.*, 204 App. Div. 651 (1923); *Perrons v. Rothschild*, 210 App. Div. 821 (1924).

³ This is also true, of course, in the case of unintentional injury by a fellow employee. See *Saenger v. Locke*, 175 App. Div. 963 (1916); 220 N. Y. 556 (1917). In this case the claimant was injured when a fellow employee, mistaking a glass of ammonia for water, threw it in the claimant's face, who had fainted following a dispute with her boss. The Appellate Division affirmed the award, but was reversed by the Court of Appeals which held that the accident did not arise out of employment.

ATTITUDE OF THE COURTS TOWARD THE LAW 71

reversal of awards has effected no radical change in the Board's general interpretation of the law. The decisions in appealed cases have, however, tended to clarify the rules which have from the beginning governed awards for injuries due to assault by a fellow servant or outsider.

Where an injured employee is the aggressor in a controversy he is not entitled to compensation.¹ The workmen's compensation law provides in Section 10 that the employer shall not be liable "when the injury has been solely occasioned. . . by wilful intention of the injured employee to bring about the injury or death of himself or another." But it is not always easy to determine in a particular case which party was the aggressor. In *Verchleiser v. Stern & Son*, 229 N. Y. 192 (1920), the Court of Appeals reversed the order of the Appellate Division, 188 App. Div. 937 (1919), and affirmed the original award, although the facts showed that the claimant was aggressor to the extent that, irritated by the horse-play of a fellow worker, he struck another fellow worker to whom he wrongfully attributed the trick played upon him.² It has also been held that the use of insulting words tending to incite assault may not be regarded as making the claimant the original aggressor. In *Knocks v. Metal Package Corp.*, 194 App. Div. 65 (1920), the Appellate Division reversed an award on the ground that the assault committed by a foreman had been provoked by the claimant who had called the foreman a "damn liar." The Court of Appeals, however, restored the award, holding that the claimant's use of irritating words did not justify an assault in law or

¹ *Ludwig v. Groh's Sons*, 8 S.D.R. 426 (1916), denying an award on the ground that the wilful intent of the decedent to injure another was the occasion of the injury and that, therefore, it did not arise out of his employment. This denial of an award was affirmed, 181 App. Div. 907 (1917). See also *Stillwagon v. Callen*, 183 App. Div. 141 (1918); *Griffin v. Robertson & Son*, 176 App. Div. 6 (1916). In the latter case the evidence showed that the decedent, Griffin, had kicked a fellow employee who had accidentally run against him with a load of rails. The fellow employee retaliated by pushing Griffin, with the result that the latter fell over a box and broke two ribs. The injury was fatal. The court reversed the award, holding that the injury "resulted from the independent and affirmative and unjustifiable act of Griffin" and hence did not arise out of the employment.

² Aggression provoked by irritating or playful conduct on the part of fellow workers has been held a bar to compensation in other cases. See *Stein v. Williams Printing Co.*, 195 App. Div. 336 (1921); *Plouffe v. American Hard Rubber Co.*, 211 App. Div. 298 (1925). See also *Frost v. Franklin Mfg. Co.*, 204 App. Div. 700 (1923); 236 N. Y. 649 (1923); and *Heitz v. Ruppert*, 218 N. Y. 148 (1916).

72 WORKMEN'S COMPENSATION IN NEW YORK

in fact and that the employer should be responsible for an excitable and violent foreman.¹

But even though the claimant was in no respect the aggressor in a controversy, compensation may be denied if the affair was unrelated to the claimant's employment. In other words, the mere fact that an assault occurred during working hours or in the establishment of the employer is not sufficient evidence that it arose out of the employment. For example, in *Schlener v. American News Co.*, 210 App. Div. 511 (1924); 240 N. Y. 622 (1925), the claimant was assaulted by an intoxicated fellow servant who was not working at the time but had come to the establishment of the employer to borrow money from his fellow employees. The Appellate Division affirmed the award on the ground that the claimant did not initiate the assault and that his work had brought him into the presence of his assailant. The Court of Appeals, however, reversed the award on the authority of the dissenting opinion in the lower court, in which it was argued that the dispute did not concern the work but arose over the request of the assailant for money and that the risk was not one reasonably to be apprehended or reasonably incidental to the employment.² Other decisions have supported awards in cases where the dispute, resulting in injury, arose over issues associated with the employment of the disputants.³

The decisions so far cited have dealt with cases in which the injured parties were participants in the affair out of which

¹ 231 N. Y. 78 (1921). See also *Rydeen v. Monarch Furniture Co.*, 212 App. Div. 843 (1925); 240 N. Y. 295 (1925). In this case a fellow employee, who refused to assist the claimant in the performance of his work, was called a vile epithet by the claimant. An altercation followed with resulting assault upon the claimant. The Industrial Board's denial of compensation was affirmed by the Appellate Division, but the Court of Appeals reversed the order and remitted the matter to the Board for further consideration, holding that the dispute was over the work and that the resulting injury was in the course of employment and arose out of it.

² But see *Rosmuth v. American Radiator Co.*, 291 App. Div. 207 (1922). In this case the award was sustained on the ground that the character of the employment increased the exposure to a risk otherwise common to humanity. The facts showed that the claimant and another employee were engaged in nightwork, carting cinders from the plant to a dump, when they were set upon and robbed by three unknown men.

³ *Tanschewsky v. Bliss Co.*, 199 App. Div. 8 (1921). Claimant accused fellow employee of taking his tools. Latter assaulted claimant. *Burke v. Townner Bros.*, 203 App. Div. 394 (1922), and *Ryan v. Auto Snoop & Safety Razor Co.*, 205 App. Div. 860 (1923), in both of which the dispute was result of jealousy over the work done by the disputants.

ATTITUDE OF THE COURTS TOWARD THE LAW 73

the injury arose. Where a worker is innocently engaged in his work and is accidentally injured as a consequence of disputes between fellow employees or outsiders,¹ or is the innocent victim of horse-play,² compensation may be awarded.

Intoxication

The workmen's compensation act provides in Section 10 that the employer shall not be liable "when the injury has been solely occasioned by intoxication of the injured employee while on duty." It is also provided in Section 21 that, "it shall be presumed in the absence of substantial evidence to the contrary. . . that the injury did not result solely from the intoxication of the injured employee while on duty." The effect of these provisions has been to make it almost impossible for the employer to escape responsibility for injuries received by intoxicated workers, even in those cases where the intoxication was clearly an important factor in bringing about the injury.³ In particular in the case of an unwitnessed, fatal accident, the occurrence of which is proved by sufficient evidence, the mere fact that the injured worker was intoxicated does not serve to relieve the employer.⁴

Some protection against an arbitrary assumption that intoxication was not the sole cause of an accident has been afforded by the courts. In a few cases where intoxication has been alleged by the employer or his insurance carrier as the cause of the accident, the courts have remitted awards

¹ *Cunningham v. Fuller Co.*, 27 S.D.R. 416 (1922).

² *Marshall v. Green Felt Shoe Co.*, 221 N. Y. 493 (1917); *Leonbruno v. Champlain Silk Mills*, 192 App. Div. 858 (1920), 229 N. Y. 470 (1920); *Guyon v. Standard Wall Paper Co.*, 204 App. Div. 851 (1922); *Becker v. General Electric Co.*, 204 App. Div. 856 (1922). See, however, *De Filippis v. Falkenberg*, 170 App. Div. 153 (1915); 219 N. Y. 581 (1916). In this case the facts showed that someone, without cause or provocation, stuck a pair of scissors through a knot hole, hitting claimant's eye. The award was reversed on the ground that the injury had no connection with employment.

³ Occasionally there is a clear case. For example, death benefits were denied by the Commission in the case of an intoxicated railroad employee who sat down on the track and was run over. *Dowling v. N. Y. Central & H. R. R. Co.*, 9 S.D.R. 320 (1916).

⁴ For example, in *Burns v. Products Mfg. Co.*, 181 App. Div. 910 (1917); 223 N. Y. 684 (1918), the driver of a garbage wagon was found unconscious in the bottom of his wagon by his fellow workers who, having passed one can up to him, had turned their backs to get another. The award was affirmed without opinion in both courts.

74 WORKMEN'S COMPENSATION IN NEW YORK

with instructions to make a specific finding on the question of whether or not intoxication was the sole cause of the injury.¹ In some instances awards have been reversed on other grounds when the general circumstances surrounding the accident were such as to raise a presumption that it was due to the intoxication of the injured employee, the policy of the courts being to leave unquestioned the specific findings of the commission or board upon this point. For example, in *Berg v. Great Lakes Dredge and Dock Co.*, 173 App. Div. 82 (1916), the award was reversed and remitted upon the ground that the accident did not occur in the course of employment. The evidence showed that the employee, a craneman on a dredge, who had gone ashore in the afternoon and spent the greater part of the night in a saloon, was drowned at four o'clock in the morning by falling off the dock while waiting for a boat to take him to the dredge. Although his intoxication at the time of the accident was proved by the uncontradicted testimony of disinterested witnesses, the commission found that the accident "was not occasioned solely by the intoxication of the injured employee while on duty." The court, in reaching its decision, however, held that

"The controlling fact is that he had been ashore solely for purposes of his own and lost his life before he returned to his place of employment or to the premises of his employer and before he had gained access to the boat which was to carry him from the dock to the dredge."²

In the recent case of *Shearer v. Niagara Falls Power Co.*, 242 N. Y. 70 (1926), the Court of Appeals discussed at some length the question of intoxication as the cause of an accident. It declared that in cases where the employer offers substantial evidence from which reasonable persons would reasonably draw the inference that the employee was drunk at the time of the accident and that his fall was due to his

¹ *Doris v. National Biscuit Co.*, 214 App. Div. 827 (1925); *Shearer v. Niagara Falls Power Co.*, 242 N. Y. 70 (1926). In the latter case the award has been affirmed by the Appellate Division, 213 App. Div. 844 (1925).

² See also *Pope v. Merritt and Chapman Derrick & Wrecking Co.*, 177 App. Div. 69 (1917). In this case the decedent being intoxicated was not allowed to work and went ashore from the derrick. His body was found in the water under a trestle. The court in reversing the award held that even if intoxication was not the sole cause of death, the accident did not arise out of and in the course of employment.

ATTITUDE OF THE COURTS TOWARD THE LAW 75

drunkenness, the presumption in favor of the employee has been overcome and the question of cause of injury is one for the board to decide on all the evidence in the case.

"If, in a perfectly safe place, the employee falls because he is drunk and injures himself, it is clear that the injury results solely from the intoxication, but it would be unreasonable to deny compensation only in such cases. Here death was due to the fall, from the bridge girder, but if the fall was due solely to the intoxication of the employee the case does not come under the Act."

The decisions thus far cited illustrate the difficulty of overcoming the presumption that an accident is not due solely to intoxication. This is further emphasized by the fact that in the majority of the appealed cases in which the employer has alleged intoxication as the cause of the accidents, the courts have affirmed the awards, usually without opinion.¹

THE RESPONSIBILITY OF AN EMPLOYER FOR THE ULTIMATE CONSEQUENCES OF AN INJURY

The New York workmen's compensation law states that "'injury' and 'personal injury' mean only accidental injuries arising out of and in the course of employment and such disease or infection as may naturally and unavoidably result therefrom."² This makes the employer responsible not only for the injury but for its direct and immediate physical consequences. Theoretically this does not impose upon the employer any unreasonable burden. In practice, however, the elusiveness of the relationship between accidental injury and subsequent infection or disease has provoked controversy, and the acceptance by the courts, and to a greater extent by the Industrial Board, of a broad interpretation of evidence of causal connection appears to have extended the scope of the compensation law beyond its intended boundaries. An examination of some of the peculiarly controversial cases will serve to illustrate this point.

¹ *Burns v. Products Mfg. Co.*, 181 App. Div. 910 (1917); 223 N. Y. 684 (1918). *Sorge v. Aldebaran Co.*, 171 App. Div. 959 (1915); 218 N. Y. 636 (1916). *Haworth v. Brown*, 198 App. Div. 960 (1921). *De Witt v. Grosso*, 211 App. Div. 823 (1924). *Uher v. Graydos*, 207 App. Div. 880 (1923). *Lewkowitz v. Cohen*, 210 App. Div. 803 (1924). *Callahan v. Snare Co.*, 214 App. Div. 827 (1925).

² Section 2, Subd. 7.

Resultant Disease or Infection

In a number of compensation cases disease or infection, presumably not present prior to the injury, have increased disability or produced death. Lung trouble and pneumonia may be resultant. Delirium tremens is resultant, though predisposition by drinking must exist before the accident. Blood infections are not infrequently received through accidental abrasions of the skin or during surgical operations necessitated by injuries incurred in the course of employment. For such resultant disease the employer is responsible even though the injury received was slight and under ordinary circumstances would have had no serious consequences. The Industrial Board and its predecessors have made a number of awards for sickness, increased disability or death, resulting from accidental injuries, which have been sustained by the courts wherever the existence of a causal relationship was supported by medical testimony.¹ This is in harmony with

¹The following cases in which awards have been affirmed, in several instances without opinion, indicate the variety of resultant diseases following accidental injury:

Plass v. Central New England Ry. Co., 169 App. Div. 826 (1915); reversed, 221 N. Y. 472 (1917), on the ground that the accident arose out of interstate commerce. A section laborer poisoned by ivy contracted congestion of the lungs from which he died.

Winters v. New York Herald, 171 App. Div. 960 (1915). A printer slipped on press-room floor and struck his head, the injury resulting in delirium tremens and death.

Sullivan v. Industrial Engineering Co., 173 App. Div. 65 (1916). Blow of falling timber followed by lobar pneumonia and alcoholic poisoning which caused death.

Adonato v. Greenfield's Sons, 175 App. Div. 958 (1916). Injuries to kidney resulted in abscess, and death followed a surgical operation.

Hiers v. Hull & Co., 178 App. Div. 350 (1917). Wet salt permeating a worker's glove caused an abrasion on the hand. The employee was handling hides and contracted anthrax.

London v. Casino Waist Co., 181 App. Div. 962 (1917). Alarm of fire caused woman employee to faint. Subsequently developed choreic or St. Vitus' dance.

Judice v. Degnon Contracting Co., 181 App. Div. 909 (1917). Blow from a falling timber broke the jaws of a laborer preventing him from eating solid food for five months. Death attributed to malnutrition.

Richardson v. Builders' Exchange Assn., 179 App. Div. 949 (1917). The burns of an employee who fell astride of a hot steam pipe developed into cancer.

Bloomfield v. November, 180 App. Div. 240 (1917); affirmed, 223 N. Y. 265 (1918). A cloak model whose finger was pricked by a pin suffered loss of use of a finger and serious injury to wrist as a result of infection.

Wisher v. Hais Mfg. Co., 191 App. Div. 12 (1920); affirmed, 229 N. Y. 525. Neurosis of left eye or hysterical blindness found to have resulted from injury to right eye.

Delto v. Crucible Steel Co. of America, 195 App. Div. 288 (1921). Death from pneumonia related to injury from a fall.

Schoops v. Raymond Concrete Co., 205 App. Div. 860 (1923). Claimant was

ATTITUDE OF THE COURTS TOWARD THE LAW 77

the letter and the spirit of the compensation law. The only restriction put by the courts upon the Industrial Board is that some reasonable evidence be presented supporting the alleged relationship between an accidental injury and the subsequent physical condition of the injured employee. As stated by Justice Kiley in *Gentelong v. American Hide and Leather Company*, 194 App. Div. 9 (1920):

"While the insurer, in making his contract is bound to take notice of the force of the statute under which he assumes liability, and that broad powers are conferred therein upon the Industrial Commission, that slight accidental injuries may entail fairly large compensation payments yet he is justified in anticipating that courts will not sanction the functioning of the process without some potential evidence as a basis."¹

Although in the large majority of appealed cases involving resultant disease the awards have been sustained, there are a few instances in which the evidence of causal relationship has been held insufficient. A brief summary of a number of court decisions will serve to illustrate some of the difficult and controversial issues which confront the Industrial Board in the handling of this type of case.

In *Landau v. Heyman Embossing Co.*, 194 App. Div. 947 (1920), a widow was awarded death benefits for the loss of her husband. The decedent had injured his hand, losing part of his fingers. He was in the hospital for a period of time and upon his return to his home contracted influenza from which he died. The court in this case held that there was no evidence connecting the death with the accident.²

knocked by a timber into a hole containing dirty, greasy water. Stomach trouble resulted from the swallowing of some of this water.

Wegner v. International Ry. Co., 214 App. Div. 833 (1925). Street car motorman died following operation for growth in bladder. The Industrial Board found that growth had been due to an anesthetic administered at a previous operation for hernia caused by jerk or jolt of his car in passing over a crossing. This award was unanimously affirmed without opinion.

¹ See also *Kade v. Greenhut Co.*, 193 App. Div. 862 (1920).

² In a somewhat similar case, however, an award was affirmed. *Seidemahl v. Beauclieu Vineyard Distributing Co.*, 188 App. Div. 938 (1919). The facts in this case, as summarized in the dissenting opinion of Justice Woodward, showed that the decedent, who had been bruised and wrenched by a fall, returned to work after ten days and continued in the employment for seven months without any indication of illness. He then left the employment and died a month later of pleuro-pneumonia. In *Ryan v. Vandam Warehouse Co.*, 208 App. Div. 189 (1924), the court reversed an award for disability due to heart disease on the ground that the evidence failed to show that it was caused by the accident. Heart trouble was not perceived until about seven months after accident.

The claimant in *McCarthy v. Globe Automatic Sprinkler Co.*, 196 App. Div. 619 (1921), had received compensation for injuries to his back resulting from a fall. Two years later he appeared before the Commission claiming to have received a hernia at the time he was injured. The hospital record of the treatment for the accident showed no evidence of hernia. In making its award the Commission relied on the medical testimony of its expert who inclined to the belief that the hernia had existed at that time. The court held this testimony to be mere speculation and reversed the award.

An award for alleged resultant sleeping sickness was reversed upon appeal. *Donovan v. Alliance Electric Co.*, 191 App. Div. 303 (1920). Upon reinstatement it was again reversed, 195 App. Div. 678 (1921). The sleeping sickness, suffered by the claimant, developed eighteen days after he had bumped his head against the desk. In reversing the award the court held that the weight of medical authority supported the view that this disease was infectious and in no wise the result of trauma.¹

In *Pinto v. Chelsea Fibre Mills*, 196 App. Div. 221 (1921), the award was for loss of vision due to ulcer of the cornea alleged to have been caused by dust entering the eye. In reversing this award and dismissing the claim the court declared, "But, if it be assumed that the dust did get in his eye on this date, there is absolutely no evidence that the dust which entered his eye was capable of producing the disease or infection 'naturally and unavoidably.'"

A peculiarly difficult case was presented in *Carr v. Donner Steel Co.*, 207 App. Div. 3 (1923). In this case it appeared that the injured employee was taken to a hospital to be treated for burns upon his back and forearms. The burns having healed he was permitted to return to his home, but came back to the hospital on the same day with symptoms which were later diagnosed as typhoid and subsequently died from this disease. The doctors testifying at the hearing of this case agreed that the burns could not produce the

¹ See also *Harmon v. Schulte*, 214 App. Div. 747 (1925), in which a dependency award was reversed and the claim remitted. This case differs from the Donovan case only in the fact that the injury, which resulted from bumping the head against a door, involved abrasion of the scalp which permitted infection.

ATTITUDE OF THE COURTS TOWARD THE LAW 79

typhoid. The basis of the award appears to have been the statement of one doctor that "the burns may have been a contributing factor in that they may have made for a lowered resistance." The court reversing this award and dismissing the claim declared:

"It has not been held and we think it is going too far to hold that an employer is liable for every disease a man contracts while in a hospital after he has been injured."

Serious or Fatal Consequences of Injury Due to Fault of Injured Worker

In cases where the disease or infection, resulting from an accidental injury, might have been avoided but for the fault or negligence of the injured employee, it would seem inequitable to place the burden entirely upon the employer. For example, neglect to obtain medical attention or refusal to submit to reasonable medical or surgical treatment may play an important part in producing serious or fatal consequences in connection with otherwise trivial injuries. Where the employer has made every effort to insure the prompt and successful recovery of an injured worker and where such worker has deliberately conducted himself in such a way that it might reasonably be presumed that the failure of the medical treatment was due to his negligence, an exceptional situation is created which would justify a finding that the subsequent impaired physical condition of the worker did not result "naturally and unavoidably" from the injury.

Until recently the courts have exhibited reluctance to reverse awards in such cases, presumably because it is difficult directly to trace subsequent failure to recover to the negligence of the injured party, particularly where such negligence is neither conspicuous nor wilful.¹ Recent decisions, however, indicate that the Industrial Board in making awards must hereafter take into account such negligence or fault on the part of the employee wherever it has contributed to the ultimate result of injury. In *Audi v. N. Y. Central*

¹In three early cases insurance carriers unsuccessfully plead recalcitrance of employees relative to medical care and treatment. *Beckwith v. Bastian Bros. Co.*, 181 App. Div. 909 (1917); *Mack v. N. Y. Dock Co.*, 181 App. Div. 963 (1917); affirmed, 223 N. Y. 683 (1918); *Miller v. U. S. Radiator Corp.*, 183 App. Div. 914 (1918). See also *Ratkey v. Republic Packing Co.*, 209 App. Div. 844 (1924).

R. R. Co., 212 App. Div. 846 (1925), an award was reversed and remitted with instructions to make a finding whether or not the claimant's refusal to return to the State Hospital at Raybrook for treatment for tuberculosis had been unreasonable.¹ The Appellate Division has also reversed awards and remitted the claims with instructions to make further findings on the question of reasonableness in three cases in which the claimants had refused to permit operations intended to improve their condition.² In *Germanian v. American Radiator Co.*, 214 App. Div. 746 (1925), the award was reversed and remitted on the ground that there was no evidence which supported the finding that the loss of use of a leg was the direct result of accident, since the claimant had torn the bandages and splints from the leg and left the hospital without permission. This case in particular lends support to the view that an equitable distribution of responsibility for the serious or fatal consequences of accidental injury may be attained under the present wording of the compensation law.

Acceleration or Aggravation of Pre-existing Disease

The pre-existence of disease in compensation cases gives rise to problems for which it is exceedingly difficult to find a solution which will be equitable to all of the parties. In general, the accepted theory seems to be that an employer takes workers as he finds them and must, therefore, assume the burden of compensating an injured employee even though disease or disability, unrelated to the employment, increases the probability of serious consequences in case of accidental injury. To some extent employers, particularly in large scale establishments, have fortified themselves by requiring applicants for employment to undergo physical examination and in some instances periodic re-examination. Few persons, however, are physically perfect, while many disorders and ailments afflicting mankind cannot be detected by medical

¹ The renewed award was also reversed because of error in the findings, 215 App. Div. 742 (1925).

² *Elliott v. Morgan*, 214 App. Div. 746 (1925), operation for improvement of an arm.

Salvator v. O'Brien, 214 App. Div. 750 (1925), stretching muscles of a leg.
Daugherty v. Port, 214 App. Div. 745 (1925), curing a hernia.

science in their incipient stages. Moreover, the universal application of high physical standards for industrial employment would disqualify a large number of workers and would make them more or less dependent upon society for support. In view of these circumstances it has been considered equitable to place upon industry the burden of compensating injured workers not only for the effects of disease resulting or ensuing from accident but also for disease aggravated, accelerated or developed by accident. As stated by Justice Cochrane in *Van Keuren v. Dwight, Divine and Sons*, 179 App. Div. 509 (1917):¹

"If an employee has a disease and having same receives an injury 'arising out of and in the course of employment' which accelerates the disease and causes his death, such death results from such injury and the right to compensation is secured even though the disease itself may not have resulted from the injury."

In making awards in cases where the situation is complicated by the fact that the injured worker was suffering from some known or unknown ailment at the time of injury the Industrial Board is called upon to determine two main issues: (1) Did the accident arise out of the disease rather than the disease out of the accident? (2) Has the accident originated or aggravated the disease? The Board's findings of fact on these issues have rarely been questioned by the courts. Only a few cases have been reversed upon appeal for want of a connection between the accident and the disease.²

It is obvious that accidental injuries resulting solely from disease do not come under the compensation law. Such injuries are generally the consequence of falls brought about by sudden acute attacks of existing disease. The question whether the disease caused the accident or the accident the disease is not always easy to determine. An illustrative case is that of *Collins v. Brooklyn Union Gas Company*, 171 App. Div. 381 (1916). The evidence in this case showed that the

¹ Affirmed by the Court of Appeals without opinion, 222 N. Y. 648 (1918).

² In only five of the more than eighty cases involving this issue, which were passed upon by the Appellate Division between July, 1921 and April, 1923, the award was reversed and the claim dismissed. In three of these five cases the reversal was made upon grounds other than disease or infection. In more than sixty cases the award was upheld without opinion. See New York State Department of Labor, "Special Bulletin No. 118," Albany, N. Y., 1923, p. 145.

deceased, who suffered from cardiac syncope, suddenly fell, while sweeping dirt and pebbles in the street, and fractured his skull. The award to a dependent was based on the theory that the injured man had stumbled over some obstruction. It was also suggested that an excessive quantity of gas from a nearby trench had caused a fainting spell. Finding the evidence insufficient to support either of these theories, the court reversed the award.¹

In a number of cases the accidental character of the injury is not disputed, but the controversy centers itself around the question of whether or not the accident was responsible for the subsequent acceleration of the existing disease. Appendicitis, cancer and glaucoma are latent troubles which accidents are likely to activate. Tuberculosis is frequently latent in apparently healthy individuals and becomes active following an injury which has lowered the resisting power of the injured worker. The causal relationship between an accident and the subsequent development of the disease is not always self-evident. In many cases medical science is unable to determine with any degree of exactitude the part played by an accidental injury in accelerating or aggravating disease. Nevertheless, the courts have sustained awards in such cases, provided that some evidence was produced in support of the theory that the subsequent disability or death through disease was in some way related to an accident incurred in the course of employment.²

¹ See also *Minerly v. Kingsbury Construction Co.*, 191 App. Div. 618 (1920); *Neuberger v. Third Avenue Ry. Co.*, 192 App. Div. 781 (1920); and *Kelly v. Nichols*, 199 App. Div. 870 (1921). However, falls resulting from vertigo or dizziness caused by the conditions under which the work is being done at the time of injury may be compensable. See *Santacroce v. Sag Harbor Brick Works*, 182 App. Div. 442 (1918).

² In the following illustrative cases awards have been sustained:

Activated Tuberculosis

- McGoey v. Turin Garage and Supply Co.*, 195 App. Div. 436 (1921).
- Deshon v. Federal Sugar Refining Co.*, 190 App. Div. 890 (1919).
- Martin v. Crag and Prooman*, 197 App. Div. 911 (1921).
- Bozman v. Gibson*, 202 App. Div. 776 (1922).
- Van Gordon v. Hines Condensed Milk Co.*, 193 App. Div. 601 (1920).
- Rist v. Larkin & Sangster*, 171 App. Div. 71 (1916).
- Heenan v. General Electric Co.*, 208 App. Div. 753 (1924).
- Kilburn v. Texas Co.*, 208 App. Div. 824 (1924).
- Ulrich v. National Meter Co.*, 211 App. Div. 823 (1924).
- Timps v. Thompson Stewart Co.*, 211 App. Div. 827 (1924).
- Ryan v. American Bridge Co.*, 214 App. Div. 750 (1925).
- Wilcox v. New System Laundry*, 214 App. Div. 751 (1925).

(Footnote continued on page 83.)

ATTITUDE OF THE COURTS TOWARD THE LAW 83

In certain instances, however, awards have been made for accelerated disease which was not shown to be directly related to accidental injury. A considerable lapse of time between the injury and the subsequent development of the existing disease tends to negative the theory of a causal relationship.¹ In *Shapiro v. Wanamaker*, 197 App. Div. 810

(Footnote (*) continued from page 82.)

Appendicitis

- Stolte v. N. Y. State Sewer Pipe Co.*, 179 App. Div. 949 (1917).
- Lindquist v. Holler & Shepherd*, 178 App. Div. 317 (1917).
- Reid v. Summit Foundry Co.*, 199 App. Div. 948 (1921).
- Luh v. Farley*, 209 App. Div. 881 (1924).
- Sigmor v. Wagner Construction & Repair Co.*, 213 App. Div. 844 (1925).

Heart Trouble

- Cook v. N. Y. C. R. & H. R. R. Co.*, 179 App. Div. 967 (1917).
- Uhl v. Guarantee Construction Co.*, 174 App. Div. 571 (1916).
- Nathanson v. Forsyth Bait Co.*, 198 App. Div. 981 (1921).
- Murray v. Collier & Son Co.*, 197 App. Div. 915 (1921).
- Schobal v. American Ry. Express Co.*, 207 App. Div. 879 (1923).
- La Rock v. Austin Co.*, 208 App. Div. 824 (1924).
- State Treasurer v. Factors Delivery Co.*, 210 App. Div. 822 (1924).
- Hart v. Bowman Co.*, 212 App. Div. 846 (1925).
- Frank v. Strauss*, 214 App. Div. 827 (1925).

Genital Organs

- Finkelday v. Heide*, 193 App. Div. 338 (1920); 230 N. Y. 598 (1921).
- Lomascolo v. Ryan*, 194 App. Div. 923 (1920).
- Horr v. Phoenix Iron and Foundry Corp.*, 198 App. Div. 981 (1921).
- Reiter v. Bronx Refrigerator Co.*, 207 App. Div. 882 (1923).
- Kwinski v. Pierce-Arrow Motor Car Co.*, 213 App. Div. 840 (1925).
- Rocco v. Heidelberg Wolf & Co.*, 213 App. Div. 840 (1925).
- Sheehan v. City of New York*, 214 App. Div. 750 (1925).

Eyes

- Blaes v. Blist Co.*, 177 App. Div. 370 (1917).
- Mathews v. General Electric Co.*, 181 App. Div. 912 (1917).
- Brady v. Atlantic Basin Iron Works*, 195 App. Div. 951 (1921).
- Carr v. Comper*, 199 App. Div. 947 (1921).

Other Accelerated Diseases

- Owens v. N. Y. Mills Corp.*, 178 App. Div. 942 (1917).
- Greenberg v. Canadian Knitting Mills*, 178 App. Div. 942 (1917).
- Davis v. Buffalo Homeopathic Hospital*, 198 App. Div. 983 (1921).
- Fisher v. LaReine Costume Co.*, 199 App. Div. 946 (1921).
- Lawton v. Wallace and Keeney*, 202 App. Div. 435 (1922); 208 App. Div. 753 (1924); 239 N. Y. 540 (1924).
- Armstrong v. American Red Cross*, 202 App. Div. 766 (1922).
- Keenan v. Duford Garage Co.*, 207 App. Div. 878 (1923).
- Coyle v. Sommerich*, 210 App. Div. 816 (1924).
- Klein v. Majestic Tailoring Co.*, 213 App. Div. 843 (1925).

¹The Board denied benefits to the widow of a wood-chopper who died of cardiac dilation with acute miliary tuberculosis as a contributing cause, more than two years and eight months after an accident. This denial was affirmed by the Appellate Division, *Meyer v. Luzerne Chemical Co.*, 214 App. Div. 741 (1925). Denials on similar grounds were also affirmed in *Pozonkowski v. Totenville Copper Co.*, 199 App. Div. 950 (1921); and *Dickquist Estate v. Chautauqua Worsted Mills*, 207 App. Div. 880 (1923).

(1921), the lapse of seven months between the injury and the discovery of a cancer, together with the speculative character of the medical testimony, led the court to reverse the award and dismiss the claim. In the case of such diseases as lung trouble, cancer or appendicitis, injury to unrelated parts of the body is not regarded as the cause of acceleration of the disease. In *Bloch v. Contact Process Co.*, 211 App. Div. 641 (1925), an award for disability due to pleurisy was reversed on the ground that the record disclosed no legal evidence that the claimant had received in the accident in question any injury to his chest.¹ As a rule, however, awards for the acceleration or aggravation of disease by injury have been reversed by the courts on the ground that the facts of the case and, more particularly, the medical testimony failed to justify a finding that the subsequent disability or death from disease was related to the accidental injury. The leading case of this kind is *Borgsted v. Shultz Bread Co.*, 180 App. Div. 229 (1917). In this case an award was made for permanent total disability based upon loss of eyesight. This loss of eyesight resulted from syphilis which was found to have been aggravated by an accidental fall in which the claimant had suffered an injury to his ankle. In reviewing the record of the case the court declared that the evidence indicated that "the atrophy of the optic nerve predated the injury, and the only inference from the testimony is that the claimant was so far advanced in the disease that it was only a matter of a comparatively short time when he must have reached the results which now prevail, though no accident had happened." The slight testimony to the effect that the disease had been accelerated or aggravated by the accident was held insufficient "to bring the case within the letter or the spirit of the statute." Indicating that the claimant might be entitled to further compensation for the leg injury even though it was prolonged by the disease but declaring that the "State Industrial Commission has no jurisdiction to award compensation for a permanent total disability due to loss of eyesight," the court reversed the award and remitted the claim.

¹ See also *Dutine v. Gude Co.*, 32 S. D. R. 394 (1925), in which a death award was denied on the ground that death was not due to injury, since the malignant growth which caused it was not close to the site of injury.

Other cases in which awards have been reversed include: *Landau v. Bliss Co.*, 199 App. Div. 145 (1921), loss of use of eye through alleged aggravation of pre-existing condition by blow of chip of metal.

Reidel v. Bliss Company, 205 App. Div. 860 (1923), sclerosis alleged to have been caused or aggravated by blow on the head. *Weighton v. Austin Co.*, 205 App. Div. 159 (1923). Paralysis and loss of mind alleged by appellant to have been caused by syphilis rather than accidental fall.

Ward v. American Car & Foundry Co., 211 App. Div. 827 (1924). Contact of oil can with electric wire caused flash of electricity. Autopsy of death of employee twelve days later showed blood clot back of eye. A physician associated death with eclampsia.

Arnold v. S. R. Mfg. Co., 208 App. Div. 305 (1924). Loss of eyesight due to activated syphilis.

Kelley v. International Motor Co., 205 App. Div. 737 (1923). Ruptured gastric ulcer resulting in death attributed to injuries to back and neck received in a collision.

Manley v. Artistic Metal & Roofing Co., 209 App. Div. 770 (1924). Ulcer attributed to laceration of shin-bone rather than varicose condition of claimant.

UNMERITED OR EXCESSIVE AWARDS

The basic idea underlying workmen's compensation legislation is that the industrial worker should be protected against the loss of earning power due to accidental injury. It is true that, under the New York law, provision is made for the payment of compensation in certain cases where earning power is not necessarily decreased, for example in the case of facial disfigurement. In general, however, an award is intended as a substitute for the wages which an injured worker is no longer able to obtain. In some instances the extent to which earning power has been lessened can be measured with reasonable exactitude. In other cases the seasonal character of an occupation, the inability of an injured worker to obtain employment because of business conditions or other factors, tend to make a precise determination of the effect of continued disability upon the capacity to

earn a living exceedingly difficult. In either event it is only reasonable to expect the Industrial Board and the referees employed by it to be guided by the facts presented. That such has not always been the case is indicated by the fairly large number of cases in which awards have been reversed or reduced by the courts on the ground that the amount awarded was excessive or undeserved.

Malingering

One of the chief sources of complaint on the part of employers against the operation of the workmen's compensation law is the tendency of injured employees to magnify the extent of their disabilities with a view to continuing or increasing the amount of their compensation. It is a natural reaction for a worker to desire to profit as much as possible from an injury. Since the resumption of employment means a reduction in compensation, there exists an incentive to prolong absence from work. In some instances this mental attitude develops a neurosis or psychic inability to work.¹ More commonly it assumes the form of malingering or unwillingness to seek employment suited to physical capacity.

The leading case in which the question of malingering is presented is *Jordan v. Decorative Company*, 230 N. Y. 522 (1921). The evidence in this case indicated that the claimant, who was partially disabled by a hernia, had worked during the summer for a race track association and could have remained in its employ if he had been willing to serve as watchman. The Court of Appeals found that the refusal of the claimant to accept work was not explained and, declaring that "The Statute was not adopted that sloth might be a source of profit," revised the award and ordered a rehearing. It also laid down the general principles governing the determination of earning capacity and the duty of partially disabled workers to seek employment.

¹ Awards for disability due largely to neurosis have been generally sustained. *Flanagan v. Jones Bros.*, 192 App. Div. 939 (1920), 197 App. Div. 914 (1921); *Folmets v. Clancy Piano Action Co.*, 199 App. Div. 945 (1921); *Hollen v. Harrower*, 199 App. Div. 947 (1921); *Arhu v. Garrison*, 202 App. Div. 862 (1922); *Morris v. General Electric Co.*, 202 App. Div. 862 (1922); *Baker v. General Electric Co.*, 204 App. Div. 850 (1922), 210 App. Div. 495 (1924); *Levinio v. Garrison*, 210 App. Div. 803 (1924); *Marcus v. Meyer*, 210 App. Div. 803 (1924); *Pias v. Garrison*, 210 App. Div. 804 (1924).

ATTITUDE OF THE COURTS TOWARD THE LAW 87

"Failure to find work is, indeed, no ground for compensation if the failure has its origin in general business conditions, the slackness of the demand for labor. Failure to find work stands upon a different basis when the labor is unmarketable because of the condition of the laborer. There is some basis for a finding that this was the claimant's plight. . . . The general conditions of business in the spring of 1919 were within the knowledge of the commission. Slackness of trade at that time did not embarrass the efficient laborer. Rebuff, if suffered, might reasonably be ascribed to the narrow opportunities that await the sick and halt. In such circumstances, disability, followed by search for work and failure, will justify the inference of diminished earning power."

It is also held that an injured worker's earning capacity should be determined not on the basis of his ability to resume his former employment but by his ability to do work of any kind.¹ Moreover, it is the duty of a claimant not only to seek work "but to exert himself to obtain the best possible wages for his services."² In seeking work it is not sufficient for a claimant to confine himself to applying only to his previous employer, nor is it a duty of the employer to provide a claimant with suitable employment.³ For these and similar reasons the courts have reversed a fairly large number of awards in cases where the medical testimony indicated that the claimant was physically able to perform work of some sort but had made little or no effort to obtain employment.⁴ In general, however, the courts have refused to inter-

¹ *Becker v. General Electric Co.*, 210 App. Div. 495 (1924). "The wage earning capacity of the claimant is not to be measured by his ability to work as a tailor but by his ability to perform any work within his power." In *McCann v. McCormack's Garage*, 203 App. Div. 387 (1922), it was held that the claimant's profits from a trucking business which he had established subsequent to his injury were "in no sense a measure of his wage-earning capacity." The issue of malingering was not raised in this case.

² *Cantor v. Kaplan*, 209 App. Div. 338 (1924). In this case the claimant went to work for his former employer at one-half his previous wages, although for a period of five days after the accident he had worked for another employer at wages greater than those received at the time of accident.

³ *Dink v. U. S. Railroad Administration*, 204 App. Div. 164 (1923).

⁴ *Markowitz v. Walters Laboratories*, 191 App. Div. 267 (1920); *France v. Kingston Shipbuilding Corp.*, 190 App. Div. 783 (1920); *Chimora v. International Ice Cream Co.*, 493 App. Div. 538 (1920); *Nidds v. Sterling Ceiling & Lathing Co.*, 195 App. Div. 452 (1921); *Grunsick v. Schaefer & Son*, 195 App. Div. 334 (1921); *Dunn v. Brooklyn R. T. Co.*, 197 App. Div. 748 (1921); *McNerney v. Heller*, 200 App. Div. 285 (1922); *Halperin v. Eagle Pencil Co.*, 202 App. Div. 770 (1922); *Dink v. U. S. R. R. Adm.*, 204 App. Div. 164 (1923); *Bello v. General Electric Co.*, 204 App. Div. 613 (1923); *Cantor v. Kaplan*, 209 App. Div. 338 (1924); *Burg v. Burgard Co.*, 209 App. Div. 837 (1924); *Becker v. General Electric Co.*, 210 App. Div. 495 (1924); *Fingerald v. Haseni*, 210 App. Div. 326 (1924); *Johnson v. N. Y. Harbor Dry Dock Co.*, 214 App. Div. 747 (1925).

ferre with the decisions of the Board except in cases where the evidence of malingering was substantial.¹

Excessive Awards

A large number of appeals from awards have been taken to the courts by employers and insurance carriers on the ground that the awards were excessive in amount. Since many of these cases involved fine points of law which needed judicial interpretation, their reversal was in no way a reflection upon the fairness of the methods used by the Board to determine the amount of compensation. Nevertheless, the number of awards which were modified or reversed by the courts because they were considered excessive seems to indicate a tendency on the part of referees and members of the Industrial Board to be liberal and perhaps occasionally over-indulgent in their attitude toward claimants.

An excessive award is likely to result from a miscalculation of the earnings of the injured worker at the time of the accident. The law provides three methods of determining the average weekly wage of an injured employee. The first relates to an employee who worked under one or more employers for substantially a year in the employment in which he was engaged at the time of injury. His average annual earnings are determined by multiplying by three hundred the average daily wage earned during the days when he was employed. As a rule this method is not applicable to seasonal occupations or part-time employment. An alternative method is, therefore, provided for employees who have not worked substantially a year at the one employment. The earnings of such workers may be based upon the average daily wage received by an employee of the same class working substantially the whole of the preceding year in the same or similar employment and in the same locality. This wage is multiplied by three hundred and the result divided by fifty-two to arrive at the average weekly earnings. If neither of these methods can reasonably and fairly be applied, a

¹Of thirty-five total disability awards in which appeal to the courts was made, during the period from March 1, 1924 to July 1, 1925, upon the ground that the claimants were either wholly or partly recovered from their injuries, the Appellate Division without opinion reversed ten and affirmed twenty-five. New York State Department of Labor, "Special Bulletin No. 140", Albany, N. Y., 1925, p. 127.

third alternative may be used. The annual earning capacity of the injured employee in the employment in question may be estimated on the basis of his previous earnings and those of other employees doing similar work in the same locality.

The application of these three methods of wage determination is sometimes difficult. This is particularly true in the case of workers who were injured after having been employed for a relatively short time. Occasionally the determination of earnings is complicated by other circumstances, such as the seasonal character of the employment or the existence of supplementary income in the form of bonuses, tips, or board and lodging.¹ Moreover, in many instances the use of one method in preference to another directly affects the amount of the award. Computation under the third method is usually found to be to the advantage of the employer or insurance carrier. The context of the section indicates, however, that the second method may be used only when the first fails, and the third only when both the first and second fail.

In a number of cases awards have been modified or reversed and remitted on the ground that the earnings of the injured worker were not properly computed.² Apparently in only one case has the miscalculation of earnings been to

¹ Tips may constitute a recognized part of earnings if received by the employee with the knowledge and acquiescence of the employer. See *Sloate v. Rochester Taxi-cab Co.*, 177 App. Div. 57 (1917), and *Bryant v. Pullman Co.*, 188 App. Div. 311 (1919), affirmed 228 N. Y. 579 (1920). The winnings received from automobile racing may be part of a chauffeur's compensation. *Dearborn v. Peugeot Auto Import Co.*, 175 App. Div. 957 (1916). A production bonus was held to be properly included in *Ciarla v. Solway Process Co.*, 184 App. Div. 629 (1918), affirmed 226 N. Y. 566 (1919).

² *Cohen v. Rothstein and Pitofsky*, 176 App. Div. 35 (1916). A piece worker's wage was incorrectly reported as \$6 per day. Actual earnings during year prior to accident were \$580. Commission failed to determine average weekly wage. Award reversed, claim remitted.

Little v. Fuller Co., 223 N. Y. 369 (1918). Earnings of bricklayer computed by multiplying daily wage by three hundred. Evidence to effect that bricklayers averaged only thirty weeks' employment. Award reversed with instructions to compute average weekly wage on basis of actual earning capacity.

Reno v. Skenandoa Cotton Co., 189 App. Div. 367 (1919). Employee worked five days a week. At time of injury was receiving \$17.40 plus a bonus. During previous year had received \$826 or average of \$15.80 a week. Held that, since employee worked only five days a week, methods in subdivision 1 and 2 could not be used. Award modified on basis of actual earning capacity and as modified affirmed.

Rooney v. Great Lakes Transit Corp., 191 App. Div. 10 (1920). "Any computation based on annual earnings of \$1,350 for a claimant who, for a period of about seven months, actually earned less than \$400 is, in the absence of explanatory cir-

90 WORKMEN'S COMPENSATION IN NEW YORK

the disadvantage of the claimant.¹ This may be regarded as evidence that, in general, referees are inclined to favor claimants in the computing of earnings as a basis for an award, although it should be recognized that appeal to the courts is less frequently employed by claimants because of the necessary expense of such litigation.

The application of the provisions of subdivision 3 of Section 15 to disabilities partial in character but permanent in quality has also been the basis of controversy over the amount of compensation to be awarded in specific cases. This situation has been somewhat clarified by recent amendments of the law. But the power of the Industrial Board to determine the proportionate loss, or loss of use of a hand, foot or eye, has given rise to a number of problems for which the law

circumstances, manifestly unreasonable and unfair." Award reversed and claim remitted.

Fox v. Bachner Bros. Co., 191 App. Div. 706 (1920). Award based on weekly wage of \$9 although highest weekly earnings of claimant, a piece worker, were \$3.60 and lowest 25 cents. Other similar workers averaged \$3 per week. Award reversed and claim remitted.

Roskie v. Amsterdam Yarn Mills, 191 App. Div. 649 (1920). Employee worked five and a half days a week. The wage figure used as the basis of the award was computed by dividing a fellow employee's average weekly wage by five and half, multiplying by 300 and dividing the result by 52. By this method the average weekly wage of \$21.54, used at the start, was increased to \$22.61. The award was reversed and remitted.

Vaughn v. Barnett Leather Co., 191 App. Div. 652 (1920). A woman employee earning between \$10 and \$11 a week was injured shortly after she had been placed in charge of a machine ordinarily operated by a man earning from \$23 to \$27 per week. The male operators were on strike. The award, based upon an average weekly wage of \$28.84, was reversed and remitted.

McDonald v. Burden Iron Co., 206 App. Div. 571 (1923). Injured worker had been employed twenty-six weeks, his average earning being \$18.31 per week. The award was based upon this figure. The court, upon evidence that the establishment of the employer operated about forty weeks each year, computed the annual earning capacity of the claimant on this basis and modified the award by substituting \$9.52 in place of \$11.75.

Gruber v. Kramer Amusement Corp., 207 App. Div. 564 (1924). Claimant, a miner, employed only one day a week. Award reversed and remitted.

Burg v. Burgard Co., 209 App. Div. 837 (1924). Held that employment was seasonal and that the weekly wage should have been determined under subdivision 3 of Section 14. On this ground together with the fact that there was evidence of malingering, the award was reversed and remitted.

Testo v. Burden Iron Co., 211 App. Div. 219 (1925). Award modified by substituting \$16.05 in place of \$17.18.

Kittle v. Town of Kinderhook, 214 App. Div. 345 (1925). Award reversed and claim remitted to take further proof concerning, and make computation of the average weekly wages of the claimant.

¹*Merrill v. Pickett*, 203 App. Div. 262 (1922). Upon rehearing the rate of the award was raised from \$10.11 to \$16.35 per week, the amount of the award being increased by \$946.88. This award was affirmed without opinion, 208 App. Div. 753 (1924).

provides no specific solution. In particular the question of vision has been troublesome. An injury to an eye may seriously affect direct vision, although field and binocular vision may remain normal. It has been the custom of the Industrial Board and its predecessors to employ the Snellen test—the familiar chart with rows of letters, large and small, used by oculists—to determine the degree of eye injury. Although it has been contended that the use of this method alone is an arbitrary procedure and that other tests are more reliable, the courts have upheld this policy.¹ In recent decisions, however, the Appellate Court has expressed the view that direct vision alone as the measure of eye disability is an inadequate basis on which to rest compensation awards. In *Struble v. Vacuum Oil Co.*, 210 App. Div. 344 (1924), this question was directly presented. The claimant in this case suffered from a corneal scar which covered two-thirds of the pupillary area of his right eye and resulted in defective vision which eye glasses could not correct. By the Snellen test the claimant's vision in this eye was "20/50", which meant that an object which a normal eye should see at a distance of fifty feet became clearly visible to the claimant's injured eye at twenty feet. The Industrial Board, interpreting this symbol as a common fraction, found that the claimant's eye was two-fifths normal or sixty per cent blind and awarded compensation on that basis. The carrier argued that this was an improper application of the test and that the calculation should be reached by taking the difference between the angle subtended by normal vision and that subtended by the impaired vision as a numerator. Thus, the angle for 20/50 vision being $12\frac{1}{2}$ minutes and for normal vision 5 minutes, the fractional loss for the eye in question would be $12\frac{1}{2}$ less 5 divided by 50, or 15 per cent. The Appellate Division in remitting the claim expressed the opinion that the latter method was the more satisfactory one but refused specifically to limit the award to an amount based upon 15 per cent loss of vision. Upon rehearing by the Board the original award was renewed. The carrier took a second appeal, and the Appellate Division again reversed the award

¹ *Turpin v. St. Regis Paper Co.*, 199 App. Div. 64 (1921); affirmed without opinion, 233 N. Y. 536 (1922).

92 WORKMEN'S COMPENSATION IN NEW YORK

and remitted the claim without opinion but with the statement that its action was based "on the ground that the Board in making the award, considered only acuity of vision, ignoring field vision and other attributes of sight."¹

The measurement of impaired vision by the Snellen test was an issue in *Przckop v. Ramapo Ajax Corp.*, 214 App. Div. 512 (1925). In this case the court directly declared that "the assumption that 20/100, Snellen, has the significance of a common fraction, or that the Workmen's Compensation Law, by virtue of the section quoted, has stamped 20/100, Snellen, as industrial blindness, has no authority in reason or in authority." This case raised the question of the effect of a previous impairment of vision upon the measurement of subsequent further impairment through accidental injury. The claimant was shown to have suffered partial loss of vision in both eyes as early as the year 1914, due to corneal scars, caused by smallpox. The vision of the uninjured right eye was found to have improved somewhat. Examination of the left eye after the accident in 1923 showed a vision, according to the Snellen method, of 20/100 which was the same degree of vision alleged to have been found by examination in 1914. The Industrial Board, disregarding the previous impairment of vision, made an award for the total loss of an eye on the basis of eighty per cent loss of vision which under the law is equivalent to total loss. The Appellate Division in reversing the award and remitting the claim held that the further impairment of already impaired eyesight should not be treated as though the eyesight had been normal. It distinguished this situation, however, from that presented in an earlier case in which the claimant, whose vision was below normal before the accident, suffered actual total loss of eyesight.²

Another problem related to awards for loss of vision arises

¹ 214 App. Div. 844 (1925).

² *Hobertis v. Columbia Shirt Co., Inc.*, 186 App. Div. 397 (1919). In citing this case the court in the *Przckop* case declared "It is true that if a claimant, having only fifty per cent vision, loses what remains, he may have a recovery as for the total loss of an eye. Having lost all vision possessed his loss is total. However, it would be quite a different thing to say that a claimant, whose natural vision was fifty per cent of normal, has sustained a total loss under the eighty per cent provision, when his vision is reduced by an accident to twenty per cent, not of vision possessed, but of normal vision."

ATTITUDE OF THE COURTS TOWARD THE LAW 93

in cases where the impaired eyesight may be improved through the use of glasses. On this point the courts have held that, if the effect of an eye injury is rectified by glasses or similar means and if no loss of earning power is shown, no award may be made and that in any event the Board should take into consideration the artificial improvement of vision.¹ But if the artificial restoration of eyesight can be brought about only at great inconvenience to the claimant, the effect of such restoration upon vision may be disregarded.²

In making awards for injuries to the hands or feet, the determination of the proportionate loss of use and the application of the provision of subdivision 3 of Section 15 of the workmen's compensation law have not infrequently given rise to controversy over the amount of the award. A schedule of awards for the loss of specified members is provided in this subdivision, but the law, as originally enacted, did not empower the commission to make specific awards for the proportionate loss of the use of a hand or foot in cases where the injury resulted in the loss of more than one finger or toe.³ This situation was remedied by legislative amendment in 1917. The Industrial Board, as the successor of the commission, is now authorized to award compensation proportioned to the loss of the use of a hand or foot when the injury results in the loss of two or more digits or one or more phalanges of two or more digits.⁴ Likewise compensation for permanent

¹ *Frings v. Pierce-Arrow Motor Car Co.*, 182 App. Div. 445 (1918). *Valentine v. Sherwood Metal Working Co.*, 189 App. Div. 410 (1919). *Clowan v. Harrison Construction Co.*, 190 App. Div. 924 (1919). *Corina v. Lathrop & Saxe Co.*, 191 App. Div. 928 (1920). *Reardon v. Ward Baking Co.*, 198 App. Div. 962 (1921). *McNamara v. McHarg, Barton Co.*, 200 App. Div. 188 (1922). *Bohecchio v. Charnin Contracting Co.*, 209 App. Div. 619 (1924).

² *Smith v. F & B Construction Co.*, 185 App. Div. 51 (1918).

³ In several cases the commission made awards of 244 weeks for the full loss of a hand on account of injury limited to all four of its fingers. These awards were reversed by the courts upon appeal.

Grammici v. Zinn, 219 N. Y. 322 (1916). Injury involved loss of three fingers and first phalanx of fourth finger.

Kanwar v. Acorn Mfg. Co., 219 N. Y. 326 (1916). Injury involved loss of first and second phalanges of three fingers and distal phalanx of fourth.

Carkey v. Island Paper Co., 177 App. Div. 73 (1917). Left hand amputated. Loss of second and third fingers and two phalanges of first and fourth fingers of left hand.

Adams v. Boorum & Pease Co., 179 App. Div. 412 (1917). Three fingers lost. Index finger ankylosed.

⁴ An award proportioned to loss of a hand is not permissible when each of two accidents causes the loss of a finger. *Klock v. Rogers*, 213 App. Div. 39 (1925), and *Salgiccioli v. Laur & Mack Construction Company*, 217 App. Div. 712 (1926).

partial loss of use may be granted on the basis of the proportionate loss of use. A number of such awards have been contested on the ground that the amount of compensation was excessive, and in several instances the courts have reversed or modified the original award.¹ In *Bubniak v. Stewart & Sons*, 198 App. Div. 192 (1920), an award as for 72 per cent loss of hand for the loss of the first phalanx of the first finger and the first phalanx and part of the second of the thumb was reversed because no proof was given of the proportional loss of use of the hand. Also in *Schermerhorn v. General Electric Co.*, 195 App. Div. 670 (1921), the court reversed an award for 40 per cent loss of use made in the face of medical testimony which placed the loss at from 25 to 33 $\frac{1}{3}$ per cent.

Several awards for partial loss of fingers have been reversed on the ground that they were excessive and that the meaning of the phrase "loss of" as applied to an injured digit was improperly construed. In *Mockler v. Hawks*, 173 App. Div. 333 (1916), the court declared, "It could not have been the purpose of the legislature to enact that a loss of a fraction of the first phalanx, so slight as to be scarcely perceptible to the naked eye, should be equivalent to the loss of half the finger."²

Double or Concurrent Awards

In relatively few cases has excessive compensation been awarded through the use of double or overlapping awards, based upon the same injury but making use of alternative provisions of the law. In the case of disfigurement, accompanied by loss of earning power, it would appear that con-

¹ In addition to the two cases cited, see the following: *Clayton v. Foundation Co.*, 193 App. Div. 822 (1920); *Antonacci v. N. Y. Multi Color Copying Co.*, 194 App. Div. 953 (1920); *Forbes v. Evening Mail*, 194 App. Div. 563 (1921); *Knight v. Ferguson*, 198 App. Div. 756 (1921); *Doris v. Butler*, 199 App. Div. 116 (1921).

² See also *Geiger v. Gotham Can Co.*, 177 App. Div. 29 (1917); *Thompson v. Sherwood Shoe Co.*, 178 App. Div. 319 (1917); *Baron v. National Metal Spinning and Stamping Company*, 182 App. Div. 284 (1918); *Stringham v. Ashton*, 194 App. Div. 853 (1921); and *Ehrman v. Koch & Company*, 209 App. Div. 777 (1924). In the last mentioned case there was no loss in the length of the injured finger, but the award for loss of use of one phalanx was based upon the shrinkage of the bone due to infection. In this case dismissal of the claim accompanied the reversal.

current awards may be made.¹ An award for disfigurement may not, however, be added to an award for permanent total disability.² It has also been held that concurrent awards may not be made for temporary total and permanent partial disability. In the case of *Fredenburg v. Empire U. Railways*, 168 App. Div. 618 (1915), the claimant suffered injuries resulting in the amputation of his right foot and temporary loss of use of his hands. Two awards were made, one for permanent partial disability due to the loss of the foot, the other for temporary total disability based upon the injuries to the hands. Upon appeal, the Appellate Division affirmed the award of compensation for loss of the foot and reversed the award for the other injuries, but without prejudice to the further continuance of the case and to the right of the claimant to make further application for compensation for such other injuries if the total disability should exist at the expiration of the period covered by the award for the loss of the foot.

Following the decision in the *Fredenburg* case the commission adopted the policy of making consecutive rather than concurrent awards in similar cases. In other words, the claim was treated as a total disability case until such disability ended, at which time payments for the amputation or loss of member commenced. But this procedure was overruled by the Court of Appeals in the case of *Marhoffer v. Marhoffer*, 220 N. Y. 543 (1917), in which an award for the loss of a finger was made, conditioned to begin upon the expiration of another award for eight weeks' total disability. The court in this case declared:

"Concurrent and consecutive awards based on separate items of physical impairment, disconnected from earning power, alike ignore the fundamental principle that the basis of compensation is a sum payable weekly for a fixed time during which the employee is actually or presumptively, totally or partially disabled and non-productive."

These decisions, however, do not deprive the Industrial

¹ *Erickson v. Preuss*, 223 N. Y. 365 (1918). The constitutionality of the provision of the law with respect to facial disfigurement has been affirmed. *Sweeting v. American Knife Co.*, 226 N. Y. 200 (1919), 250 U. S. 596 (1919).

² *Clark v. Hayer*, 207 App. Div. 560 (1924). It should be noted that in this case the court expressed the view that the decision in *Erickson v. Preuss*, cited above, was no longer binding.

Board of the power to lengthen its awards or make new awards of a different character on the ground of a change in conditions.¹ Whether or not this power entitles the Board to make changes in awards which will serve to increase the compensation payments beyond the \$3,500² limit, fixed by the law for temporary total disability and temporary partial disability, is not entirely clear. In *Crockett v. Coppins and Sons*, 202 App. Div. 535 (1922), the claimant, having received compensation in excess of \$3,500 for temporary total disability, was given additional compensation for permanent total disability. The latter award was reversed upon appeal not, however, on the ground that payments could not be extended beyond the \$3,500 limit, but rather because the court found that the claimant still had a wage earning capacity. The case was remitted to the Board for disposition on the proper basis. The court indicated that it regarded the case as belonging under subdivision 3 of Section 15, relating to permanent partial disability. This decision seems to indicate that the fixed amounts do not constitute the maximum of compensation for a particular injury if any change in the claimant's physical condition furnishes a basis for additional compensation on other grounds. This opinion was expressed by the Industrial Board in one of its bulletins,³ which stated that "Nothing in the law would indicate that after payment of \$3,500 for temporary total disability under Subdivision 2, additional payment of \$3,500 may not be made for temporary partial disability under Subdivision 5, a total of \$7,000." But in two cases where awards for permanent total disability were made subsequent to awards for temporary total disability which had been paid up to the \$3,500 limit, the Appellate Division declared, "Claimant has been paid \$3,500, which is the limit of compensation for temporary disability whether total or partial. Further compensation can not be awarded unless the disability is perma-

¹ *Kriegbaum v. Buffalo Wire Works*, 182 App. Div. 448 (1918), 224 N. Y. 621 (1918); *Spaduccino v. Hayes & Co.*, 180 App. Div. 37 (1917), 213 N. Y. 681 (1918); *Metzalf v. Firth Carpet Co.*, 196 App. Div. 790 (1921); *Tollold v. Hopeman & Sons*, 209 App. Div. 719 (1924), 240 N. Y. 550 (1925); *Cohen v. Ashford Plumbing Co.*, 203 App. Div. 261 (1922), 235 N. Y. 576 (1923).

² See footnote (2), p. 22.

³ New York State Department of Labor, Bureau of Statistics and Information, "Special Bulletin No. 140," Albany, N. Y., 1925, p. 128.

ment." The reversal of the awards, however, rested on the absence of proof of permanent total disability.¹ Since neither of these cases squarely raised the question of the validity of successive awards for temporary partial and temporary partial disability, the statement of the court may be regarded as a dictum which, however, is of sufficient weight to render doubtful the opinion to the contrary expressed by the Industrial Board.

Prior to the amendment in 1915 of subdivision 7 of Section 15, the compensation law was held to permit what practically amounted to a double award in the case of an injury the disabling effect of which was increased by the fact that permanent partial disability already existed as a result of a previous unrelated accident. In the early case of *Schwab v. Emporium Forestry Co.*, 167 App. Div. 614 (1915), the court held that a claimant who had previously lost his left hand was entitled to compensation for permanent total disability for the loss of his other hand.² This decision placed upon employers the burden of paying for the contributing effect of a previous injury. Where compensation had already been paid for the disability resulting from the first accident, an award for subsequent injury, based upon the combined effects of the two accidents, was essentially double compensation. This situation was remedied by an amendment to the workmen's compensation law which provided that "an employee who is suffering from a previous disability shall not receive compensation for a later injury in excess of the compensation allowed for such injury when considered by itself and not in conjunction with the previous disability."

The courts have applied this provision and remitted or reduced awards in several cases when the amount awarded covered the disabling effects of previous injuries.³ But it has also been held that a previous fifty per cent defect of an eye did not reduce the compensation for its loss by later

¹ *Stoddard v. Hammond Steel Co.*, 214 App. Div. 825 (1925); *Clark v. Lewis Wrecking Co.*, 214 App. Div. 826 (1925).

² This decision was affirmed by the Court of Appeals without opinion; 216 N. Y. 712 (1915).

³ *Ladd v. Foster Bros. Mfg. Co.*, 205 App. Div. 794 (1923). *Klock v. Rogers*, 213 App. Div. 39 (1925). *Lewis v. Lincoln Engineering Corp.*, 213 App. Div. 545 (1925). *Prackop v. Ramapo Ajax Corp.*, 214 App. Div. 512 (1925).

injury¹ and that the loss of a part of the left hand did not reduce the compensation for the subsequent loss of the use of the left arm.²

An exceptional instance of a double award is *Bemer v. Caruso and Wolpert*, 201 App. Div. 866 (1922); 233 N. Y. 614 (1922). The claimant in this case was injured in 1917 by the fall of a derrick and as a result suffered traumatic hysteria. The disability was treated as permanent and a lump sum of \$5,000 was awarded. The claimant, however, recovered his health and went to work as a carpenter. Three and a half years after his first injury he fell through a hole in a floor and his previous psychoneurotic condition returned. A lump sum award was refused for the second injury, but periodic compensation for temporary total disability was granted. The carrier appealed to the courts, pointing out that if the amount of the previous lump sum award had been given in periodic payments, such payments would have extended to March, 1924, or almost four years after the second accident. Therefore, the effect of the new award was to provide double compensation for total disability. The new award was affirmed, however, without opinion by both the Appellate Division and the Court of Appeals.³

EVIDENCE OF PREJUDICE OR ABUSE OF THE INFORMAL METHOD OF INVESTIGATION

The workmen's compensation law provides, Section 118, that "The commission, board, referee or deputy commissioner in making an investigation or inquiry or conducting a hearing shall not be bound by common law or statutory rules of evidence or by technical or formal rules of procedure, except as provided by this chapter; but may make such investigation or inquiry or conduct such hearing in such manner as to ascertain the substantial rights of the parties." This provision was intended to facilitate the disposition of compensation cases by preventing unnecessary and ob-

¹ *Hoberis v. Columbia Shirt Co.*, 186 App. Div. 397 (1919).

² *Herrman v. Potter Corp.*, 196 App. Div. 913 (1921). This case was decided without opinion. The facts are given in N. Y. State Department of Labor, "Special Bulletin No. 114," Albany, N. Y., 1922, p. 51.

³ *Ibid.*, pp. 20-21.

structive litigation. On the whole, it has successfully fulfilled this purpose. It must be recognized, however, that the Industrial Board's informal procedure makes it imperative that the referees who conduct the original investigation of compensation cases should be conscientious, free from prejudice and informed regarding the major legal principles involved. The technical rules of procedure, which the Board is permitted to disregard, were originally formulated in order to safeguard the judicial process and to protect litigants from unfair and arbitrary conduct on the part of judges.

On the whole, an examination of the cases appealed to the courts shows comparatively little evidence of abuse of the informal method of procedure. There are a few cases, however, where the conduct of referees has been criticized as arbitrary or prejudiced. In some cases the referees seem to have been inadvertently unjudicial, while in others awards have been made upon the basis of evidence so unsubstantial as to suggest that the decisions were influenced largely by sympathy for the claimants. This attitude on the part of referees is not only unfair, but also detrimental to the successful operation of the workmen's compensation law. It could be remedied to a large extent by providing some method which would insure the appointment of trained and unbiased referees.

Arbitrary or Unfair Conduct

In *Vessaggio v. N. Y. Consolidated R. R. Co.*, 188 App. Div. 49 (1919), the court upon an examination of the record found evidence of unfairness in the conduct of the hearings which necessitated a reversal of the award.

"Clearly witnesses and counsel are entitled to respectful and courteous treatment. Sarcasm, insinuations, sneers, ridicule and intimidation, all of which were indulged in by the deputy Commissioner, have no place in the administration of justice. His attitude was not that of an impartial judicial officer patiently attempting to develop facts regardless of which side might be helped by such facts. His attitude was rather that of a belligerent and aggressive partisan attorney seeking to develop only such facts as were favorable to the party he represented."

Similarly in *Lewkowitz v. Cohen*, 202 App. Div. 769 (1922), the court reversed the award and remitted the claim for

100 WORKMEN'S COMPENSATION IN NEW YORK

further consideration on the ground that the employer was not given a fair hearing by the referee.

"The referee seems to have acted arbitrarily both in the conduct of the hearing and in the matter of fixing the average weekly wage of the claimant."

In *Gowaski v. Hooker Electro-chemical Co.*, 214 App. Div. 747 (1925), the award was reversed and the case remitted "on the ground that competent and material evidence, offered by the appellants, was excluded by the referee."

In *Fastner v. Morawitz*, 211 App. Div. 824 (1926), a case involving a claim for facial disfigurement, the referee refused to permit the defendant to examine a medical witness and also refused to permit the inclusion in the record of a photograph of the claimant although the claimant offered no objection to being photographed. In the opinion of the court, "The employer and carrier did not have a fair trial. The referee was arbitrary in his rulings and his conduct destroys confidence in his judgment."

Unjudicial Rulings or Methods of Procedure

In a number of cases awards have been reversed on the ground that the defendant was not given the opportunity to cross-examine a witness whose evidence was favorable to the claimant. In some instances there was a direct denial of such right of cross-examination by the referee or commissioner in charge of the hearing.¹ In other cases, written statements were inserted in the record as part of the evidence subsequent to the open hearings, thereby depriving the parties concerned of the opportunity to question or controvert the new issues presented.² The effect in either event was prejudicial, and the courts have very properly remanded such cases for further investigation.

Other forms of unfair conduct in the trial of compensation

¹ *Ramsey v. Fairbanks-Morse & Co.*, 171 App. Div. 959 (1915); *Gallo v. Black & Hirsch Fur Co.*, 193 App. Div. 929 (1920).

² *Jack v. Morrow Manufacturing Co.*, 194 App. Div. 565 (1921); *Stimal v. Tenet & Co.*, 198 App. Div. 427 (1921); *Gannuzzi v. Foxwood Construction Co.*, 211 App. Div. 637 (1925). See also *Fitcher v. Genesee Construction Co.*, 187 App. Div. 850 (1919), in which the court reinstated an award against the state fund on the ground that the claimant was not given a fair hearing, the annulment of the award having been based upon medical reports of which the claimant had no knowledge.

ATTITUDE OF THE COURTS TOWARD THE LAW 101

cases have also been condemned by the courts. In *Reichelson v. Steinberg & Dubin*, 206 App. Div. 640 (1923), the award was reversed and the claim remitted because the Board had refused the insurance carrier an adjournment to procure witnesses against the findings. In *Arcangelo v. Gallo and Laguidara*, 177 App. Div. 31 (1917), involving a claim for an eye injury, the medical evidence indicated that the eyesight of the claimant would probably improve. This evidence was disregarded and an award was made on the basis of loss of use of the eye, the case then being closed. In reviewing this procedure, the court declared:

"The question as to whether the proceeding should be continued or closed was one involving not merely the exercise of discretion but involving as well a substantial right of the appellants, the denial of which was prejudicial to them and imposed upon them a burden which the statute did not contemplate should be placed upon them."

Another instance of the abuse of the informal method of procedure is found in the case of *Davis v. Butler*, 194 App. Div. 58 (1920). In this case there was some uncertainty as to which of the two parties was the employer of the claimant, and two claims appear to have been filed. The defendant, Butler, testified at the hearings but did not understand that he was the defendant. His subsequent application for a reopening of the proceedings, on the ground that he had never been notified that they were against him, was denied. This refusal was held by the court to be a denial of justice. The award was reversed and the claim remitted for further investigation.

In some instances, where claimants failed to give proper notice of the injury to the employer, a finding that the employer was not prejudiced by such failure to give notice has been arbitrarily made. For example, in *Rechler v. Macy & Co.*, 212 App. Div. 133 (1925), the evidence showed that the claimant had not only failed to give notice of the accidental injury to his arm but had denied, at the time he was treated by the company's doctor, that he had met with an accident. Holding that the claimant's "condition is due to deception," the court not only reversed the award but ordered the dismissal of the claim. Failure to give notice

102 WORKMEN'S COMPENSATION IN NEW YORK

was also excused without reason in *Avellino v. McKee Refrigerator Co.*, 202 App. Div. 58 (1922). In this case the claim was disallowed four times on the ground of failure to notify the employer. At a fifth hearing, more than two years after the first hearing, the failure was excused and an award made. This award was reversed by the court upon appeal and the claim dismissed on the ground that, "As a matter of fact not a particle of new evidence was received bearing on the question of notice or the reasons ultimately assigned for excusing the failure to give such notice."

The requirement that notice of an accident be given to the employer is intended, among other purposes, as a protection against the institution of fraudulent cases. While such failure may be excused under certain circumstances, as where the disability of an injured worker prevents him from giving the required notice and where the employer is not prevented from ultimately making an investigation of the accident, it seems evident that the arbitrary excuse of such failure is prejudicial to the employer and to the insurance carrier. The courts have held that the requirement of notice "ought not to be treated as a mere formality or be dispensed with as a matter of course whenever there has been a failure to serve such notice,"¹ since it serves a substantial, definite purpose, namely, "to give an employer the opportunity to investigate the circumstances of the claim."²

Awards Unsupported by Evidence

The equitable administration of the workmen's compensation law requires that referees, in conducting their investigation of accident cases, shall not be unduly influenced by sympathy for injured claimants or impoverished dependents. Compensation is not a substitute for individual, private insurance, nor is it intended to provide security against the ordinary daily hazards of life which are in no way related to employment in industry. The possibility of obtaining com-

¹ *Bloomfield v. November*, 219 N. Y. 374 (1916).

² *Bloomfield v. November*, 180 App. Div. 240 (1917). See also *Hynes v. Pullman Co.*, 223 N. Y. 342 (1919); *Combs v. Geibel*, 226 N. Y. 291 (1919). In *Prokopiak v. Buffalo Gas Co.*, 176 App. Div. 128 (1916), the court declared, "But we have concluded to reverse the award, not because this finding is unsupported by the evidence, but because we feel that the Commission has fallen into the habit of excusing these failures to give notice, irrespective of the merits of the case, as a matter of course."

ATTITUDE OF THE COURTS TOWARD THE LAW 103

penation with little expenditure of money or effort is a temptation to fraud which is facilitated by the informal character of compensation proceedings. In the interest of a fair and honest administration of the law, it is essential that awards for accidental injury should be supported by evidence showing that there was an accident and that it occurred at a definite time and in a definite place. Under the New York law, hearsay evidence is admissible, but the courts have properly held that such evidence must be substantiated, that "there must be a residuum of legal evidence to support the claim before an award can be made."¹

In a number of cases awards have been made where there was no evidence showing that an accident for which the employer might properly be held liable for compensation had actually occurred. For example, in *Carroll v. Knickerbocker Ice Co.*, 169 App. Div. 450 (1915), 218 N. Y. 435 (1916), the basis of a dependency award was the hearsay evidence represented by statements of the decedent to his wife and to the attending physicians that he had been injured by the fall of a cake of ice. Witnesses on the scene, however, testified that they had seen no accident, and the examining doctors found no bruises or abrasions on the decedent's body. The decedent was a heavy drinker, and the immediate cause of his death was delirium tremens. This award was affirmed by the Appellate Division, but was subsequently reversed by the Court of Appeals.

Uncorroborated hearsay evidence was found in the case of *Hansen v. Turner Construction Co.*, 224 N. Y. 331 (1918). In this case the decedent, who died of a blood-clot and pressure on the brain, had stated that he had tripped and fallen, but had also told a physician that he did not know what had happened to him. The fall or collapse, which occurred on the dirt floor of the cellar of a building under construction, was unattended. The physician who made the autopsy found no evidence that death was caused by injury at the time of the fall. The Court of Appeals reversed the award and dismissed the claim.

In *Belcher v. Carthage Machine Co.*, 224 N. Y. 326 (1918), the award to a widow for the death of her husband, as a result

¹ *Carroll v. Knickerbocker Ice Co.*, 218 N. Y. 435 (1916).

104 WORKMEN'S COMPENSATION IN NEW YORK

of injury to his side, was based upon the testimony of the decedent's wife and other witnesses who claimed that the decedent had told them that his injury was due to the fall of a casting at the plant. There was no record or other evidence of this accident which was alleged to have occurred on June 7, 1916. Subsequent to that date and prior to the discovery of a broken rib in August of the same year, the decedent had been in two automobile accidents. This award was reversed and the claim remitted by the Court of Appeals.

Other awards of a similar character which were reversed for lack of evidence include *Gale v. Munroe*, 193 App. Div. 561 (1920), in which the claimant was unable to say how she had cut her finger, as alleged, upon a multigraphing machine which had no sharp edges; *Minerly v. Kingsbury Construction Co.*, 191 App. Div. 618 (1920), in which the decedent, who was subject to fits, fell, unobserved, into the water and was drowned; *McHale v. Sheffield Farms Co.*, 193 App. Div. 541 (1920), in which medical examination showed no evidence of any injury which could have contributed to the death of the driver of a milk wagon, the immediate cause being tubercular meningitis; and *Pinto v. Chelsea Fibre Mills*, 196 App. Div. 221 (1921), in which the claim was made that an eye infection had resulted from dust, although no mention of dust was made by the claimant when he was first treated for a sore eye by the factory nurse.¹

SUMMARY

The preceding analysis of the judicial review of the cases arising under the New York compensation law was predicated upon the theory that a study of those cases would furnish a basis for a partial evaluation of the compensation system. Only a detailed investigation of the original records

¹ See also *Collins v. Brooklyn Union Gas Co.*, 171 App. Div. 381 (1916); *Van Cise v. Standard Oil Co. of N. Y.*, 209 App. Div. 838 (1924); *Meehan v. Dutton Lumber Co.*, 210 App. Div. 540 (1924); *Drahlhoff v. Union News Co.*, 207 App. Div. 86 (1923); and *Schmale v. Butterick Publishing Co.*, 214 App. Div. 343 (1926). Other cases in which awards have been reversed by the Appellate Division without opinion but upon the ground that the hearsay evidence was uncorroborated include: *Wright v. Brooklyn Union Gas Co.*, 190 App. Div. 824 (1920); *Jackson v. Durani Motor Co.*, 210 App. Div. 819 (1924); *Charleston v. Erie R. Co.*, 212 App. Div. 842 (1925); *Holliday v. Sheffield Farms Co.*, 214 App. Div. 746 (1925); *Snyder v. Zucker*, 214 App. Div. 751 (1925); and *Kallasy v. Utica Heater Co.*, 210 App. Div. 819 (1924).

ATTITUDE OF THE COURTS TOWARD THE LAW 105

and of the proceedings in the many thousands of cases which are never brought before the courts would provide a complete picture of the actual operation of the compensation law. Assuming, however, that the cases which have been appealed to the courts are representative and that the summaries of the facts contained in the opinions are reasonably complete, it is believed that the foregoing analysis serves to cast some light upon the general situation and to bring to the forefront the legal and administrative shortcomings of the Industrial Board, with a view to the formulation of sound policies for the equitable enforcement of the law. The purpose of this summary is to bring together the more important facts and legal principles already shown, and to present a rounded picture of workmen's compensation in New York, divested of its more technical legal aspects.

It is evident that the New York compensation law has been extended, in part by legislation and in part by its broad interpretation, over practically the entire field of industry. Only farm labor and domestic servants are specifically exempted from its operation. Originally only certain specified hazardous occupations were covered by the law, but other non-hazardous occupations were added by an amendment, adopted in 1918, which provided that the law should apply to all establishments which employed regularly four or more workmen or operatives. The law was supplemented in 1922 by the addition of certain specified occupational diseases which, not being of an accidental origin, were not previously provided against.

The scope of the law has also been extended by a liberal interpretation of its provisions. In general the courts have held that any unanticipated event causing injury may be considered an accident and that if the event occurred while the injured worker was engaged in some activity related directly or indirectly to his employment, compensation for resulting disability may be awarded. In accord with this interpretation of the phrase "arising out of and in the course of employment", awards have been affirmed for injuries received during the noon interval or while the employee was on his way to or from work, although in the latter case the award of compensation has been limited, with certain ex-

106 WORKMEN'S COMPENSATION IN NEW YORK

ceptions, to accidents occurring upon the premises of the employer. Likewise, accidents outside the establishment of the employer have been held to arise out of the employment, provided the injured worker was at the time serving the interests of his employer. The chief exceptions are those cases where the injury was due solely to the intoxication of the injured worker, where an employee, by some act of his own, temporarily took himself out of his employment or where the accident was caused by unforeseen circumstances entirely unrelated to the employment.¹

The administration of the law has been kept reasonably free from technical legal methods of procedure. This is due, in part, to the provisions of the law itself and, in part, to the liberal attitude of the courts in compensation cases. Although refusing to be absolutely bound by the Industrial Board's findings of fact, the courts have shown a tendency to accept those findings except where the evidence in the record failed to provide reasonable support for the Board's conclusions. In such cases it has been held that the fact that the findings were contradicted by the evidence raised a question of law and subjected them to judicial reversal. In the majority of the cases appealed to the courts the awards made have been maintained. The unwillingness of the courts to exercise to the full extent their power of review is also indicated by the large number of decisions rendered by the Appellate Division unanimously and without opinions.

Under the workmen's compensation law the employer is obligated to provide compensation for injuries to his employees even though such injuries are the result of negligence on the part of the employee. This enlargement of the employer's responsibilities has been justified upon the ground that the common-law defenses of contributory negligence and assumption of risk placed an undue burden upon injured industrial workers because of the increased risks consequent upon the mechanization of industry and because these defenses served to increase the delay and cost of litigation. But the acceptance of the theory that industry should bear the cost of compensating accidentally injured workers does not serve to justify awards of compensation in cases where

¹ *McCarter v. La Rock*, 240 N. Y. 282 (1925).

ATTITUDE OF THE COURTS TOWARD THE LAW 107

injury is due solely and entirely to the fault of the injured employee. The only specific provision in the law which protects the employer against such awards is the stipulation that there shall be no liability "when the injury has been solely occasioned by intoxication of the injured employee while on duty or by wilful intention of the injured employee to bring about the injury or death of himself or another."¹ The courts, however, have supplemented this provision by holding, in certain cases where the negligence of the employee was self-evident, that the circumstances under which the accident occurred showed that it did not arise out of and in the course of employment. Such cases have usually involved disobedience of the orders of the employer. But such disobedience has been held to prevent compensation, only when the orders were strictly enforced and when they operated to limit the sphere of the worker's employment. In other words, the employer may be held liable for injury resulting from the employee's performance of his work in a forbidden manner but may be relieved of liability if the employee is injured while attempting, contrary to orders, to do work other than that for which he was employed.

The employer's responsibility has also been extended to cover accidents resulting from the negligent or intentional acts of fellow-employees. Since one reason for the adoption of the compensation system was to provide, in the public interest, against such accidents where the injured employee was in no way to blame, this added burden upon employers is no longer open to criticism. Moreover, the provisions of the workmen's compensation law and the judicial interpretation of those provisions have served to keep the responsibility of the employer for such accidents within reasonable limits. It has been held that an injury resulting from an assault by a fellow employee is not compensable where the injured employee was the original aggressor in the controversy. This denial of an award was based upon the conclusion that the injury was solely occasioned "by the wilful intention of the injured employee to bring about the injury or death of himself or another." Moreover, an injury resulting from an assault by fellow-employee may not be the object of an

¹ Section 10.

award, even though the injured worker was in no respect the aggressor, if the controversy which incited the assault bore no direct or indirect relation to the employment.

Another problem of great importance to employers and insurance carriers relates to the causal connection between accidental injury and disease. The New York workmen's compensation law provides that "'injury' or 'personal injury' mean only accidental injuries arising out of and in the course of employment and such disease or infection as may naturally and unavoidably result therefrom."¹ Unfortunately medical science is as yet unable in a large number of cases to distinguish, with assurance, a disease which naturally and unavoidably results from an injury from a disease developing independently of such injury. In the case of blood infections received through accidental abrasions of the skin or during surgical operations necessitated by accidental injury, a causal relationship may be satisfactorily established. Likewise, such diseases as lung trouble or pneumonia may be traced directly to an injury if the disease develops immediately after the accident and if the injured worker previously enjoyed good health. The greatest difficulty exists in those cases where a disease, pre-existent at the time of injury, subsequently develops or increases the disability of the injured employee. For example, tuberculosis is frequently latent in apparently healthy individuals and becomes active following an injury which lowers the resisting power of the body. Medical science cannot, with any degree of exactitude, determine the part played by the accidental injury in accelerating or aggravating a disease which in all probability would ultimately have produced corresponding disability, if no accident had occurred. The entire burden of the consequential disability is, therefore, placed upon the employer wherever sufficient medical testimony can be produced to support the finding of a causal relationship between the accident and the subsequent physical impairment. The Industrial Board's findings of fact on this issue have been questioned by the courts in relatively few cases.

Where an employee is subject to a disease, such as epilepsy or heart trouble, which may produce sudden or acute attacks,

¹ Section 2, subd. 7.

ATTITUDE OF THE COURTS TOWARD THE LAW 109

the question arises in the event of accident whether or not the accident was caused by the disease. Unless some evidence is presented in support of the inference that the accident resulted from some other circumstance, proof that the employee was subject to a disease which might have caused the injury raises a presumption against the right to compensation. However, falls resulting from vertigo or dizziness caused by the circumstances under which work was being performed have been held to be compensable.

The employer's liability for the ultimate consequences of an injury also includes those cases where the failure of the injured worker to accept or continue proper medical treatment contributes to the aggravation of the disability. This liability has recently been limited by the courts which previously exhibited a reluctance to reverse awards in such cases. In several recent cases awards have been remitted to the Industrial Board with instructions to determine whether or not the conduct of the claimants in refusing proffered medical treatment had been unreasonable.

While the judicial review of compensation awards has been of importance in restricting the coverage of the law to injuries directly related to industrial or other employment and in fixing the liabilities of employers, it has also operated effectively in preventing inequitable administration of the law. In particular, the courts have restrained the Industrial Board and its predecessors from granting excessive or unmerited compensation, from making awards on the basis of unsupported hearsay evidence and from conducting proceedings in an arbitrary or unfair manner. The number of awards altered or reversed on one or another of these grounds, while not large, is sufficient to indicate that the judicial review of compensation cases is needed to prevent the natural sympathy of referees for injured claimants or the impoverished dependents of deceased wage earners from influencing their decisions.

It does not require judicial interpretation to show that an award is excessive or unmerited where there is satisfactory evidence that the claimant is a malingerer. From the point of view of the employer, a neurosis or psychic inability to work is a form of malingering, but since it is a recognized type

110 WORKMEN'S COMPENSATION IN NEW YORK

of mental disease the courts have generally sustained awards for disability due to such neurosis. In a number of cases, however, the medical testimony showed that the claimants were physically and mentally able to do work of some kind but had made no effort to secure it. Although in a majority of the cases in which the employer or insurance carrier has made the charge that the claimant was a malingerer, the courts have refused to alter the awards, the judicial reversals in those instances where the evidence of malingering was substantial seems to indicate an over-tolerant attitude on the part of referees toward this abuse of the compensation system. The fact that positive proof of malingering is difficult to obtain is an added reason why careful consideration should be given by referees and by the Industrial Board to any allegation that a claimant is failing to exercise any earning capacity which he still possesses.

A tendency on the part of referees to be liberal and at times over-indulgent in their attitude toward claimants seems to be indicated by the number of awards modified or reversed upon appeal, because the court considered excessive the amount of compensation awarded. One type of excessive award is that resulting from a miscalculation of the earnings of the injured worker at the time of the accident. In some instances the effect of such miscalculation upon the amount of the award has been slight.¹ In others the award has been substantially increased. For example, in one case the award was computed on the basis of estimated annual earnings of \$1,350, although it was shown that the claimant, during a period of about seven months, had actually earned less than \$400.² Apparently in only one instance has the miscalculation of earnings been to the disadvantage of the claimant.³

In the case of disabilities partial in character but permanent in quality, the power of the Industrial Board to determine the proportionate loss or loss of use, of a hand, foot or eye, has enabled it to make awards which, in a number of

¹ It may be safely assumed that in a large number of cases employers have been dissatisfied with the calculation of earning capacity but have not appealed to the courts because the amount involved was small.

² *Rooney v. Great Lakes Transit Corp.*, 191 App. Div. 10 (1920).

³ *Merrill v. Pickett*, 203 App. Div. 262 (1922). Increased award affirmed, 208 App. Div. 753 (1924).

ATTITUDE OF THE COURTS TOWARD THE LAW 111

instances, employers or insurance carriers have considered excessive. In general, referees appear to have adopted the method of determining the extent of proportionate loss which was most favorable to the claimant. In the case of eye injuries, for example, the amount of direct vision remaining in an injured eye, determined by the Snellen test, has been used as the measure of eye disability. In one case¹ the claimant's vision was found by this method to be two-fifths normal or sixty per cent blind. The carrier, however, although using the same test, construed the results in a manner which took into account field vision and found the loss of sight to be only fifteen per cent. The proportionate loss or loss of use of other members involves somewhat similar problems although in most instances such injuries appear to be capable of more exact measurement than eyesight. In a number of cases, however, the courts have found that the awards have been based upon a finding that the extent of the disability was greater than was actually indicated. The most conspicuous abuse of the power to determine proportionate loss seems to be given in the case of *Schermerhorn v. General Electric Co.*, 195 App. Div. 670 (1921), where an award for forty per cent loss of use was made in spite of the fact that the greatest possible loss found by medical examiners was thirty-three and one-third per cent.

The courts have also restrained the granting of consecutive or concurrent awards based upon separate items of injury or disability. For example, in the case of *Fredenburg v. Empire U. Railways*, 168 App. Div. 618 (1915), it was held that concurrent awards could not be made for both temporary total and permanent partial disability. Following this decision the Workmen's Compensation Commission, which was the title of the administrative board at the time, adopted the policy of making consecutive awards in similar cases by treating the claim as a total disability case until the disability ended, at which time the payments for the amputation or loss of use of a member commenced. This procedure was overruled in *Marhoffer v. Marhoffer*, 220 N. Y. 543 (1917).

¹ *Struble v. Vacuum Oil Co.*, 210 App. Div. 344 (1924); 214 App. Div. 844 (1925). The court in this case, while refusing to accept the carrier's determination of the degree of loss of vision, expressed the opinion that other attributes of sight, such as acuity of vision, must be taken into account.

That sympathy for claimants has sometimes influenced the decisions of referees is also indicated by a number of cases in which awards have been made on the basis of extremely unsubstantial evidence. Under the law hearsay evidence may be accepted in compensation proceedings, but the courts have recognized that the granting of compensation solely on the basis of such testimony would open the way to fraud. It has, therefore, been the policy of the courts to insist that the hearsay evidence be supported by other evidence in order to justify an award. Particularly in the case of unwitnessed deaths it is not unreasonable to require that some circumstance or condition be shown from which it might plausibly be inferred that an accident had actually occurred. An example of an award made upon the basis of the unsupported statements of an injured worker to others prior to his death is the case of *Carroll v. Knickerbocker Ice Co.*, 169 App. Div. 450 (1915); 218 N. Y. (1916). In this case the only evidence presented in support of the award was the testimony of the decedent's wife and of the attending physicians that the decedent said he had been injured by the fall of a cake of ice. Witnesses on the scene saw no accident, and the examining doctors found no bruises or abrasions. Death in this case was due to delirium tremens. The Court of Appeals reversed this award and laid down the principle that "there must be a residuum of legal evidence to support the claim before an award can be made." Although this decision has served to restrain somewhat the granting of awards upon evidence solely hearsay in character, there have been several subsequent cases in which the absence of supporting evidence, noted by the courts upon review, has led to the reversal of awards.

There is relatively little evidence in the decisions in appealed cases of deliberate unfairness on the part of referees in their conduct of compensation hearings. In one instance it was found that a deputy commissioner had indulged in sarcasm, sneers and intimidation at the expense of witnesses and counsel.¹ In a few other cases the referee excluded evidence or was otherwise arbitrary in his rulings. In some instances a possibly inadvertent act on the part of a referee,

¹ *Fessaggio v. N. Y. Consolidated R. R. Co.*, 188 App. Div. 49 (1919).

ATTITUDE OF THE COURTS TOWARD THE LAW 113

such as the inclusion in the record of written statements or reports presented subsequent to the hearing, has been shown. In all there appear to be not more than fifteen cases in which the courts have taken judicial notice of arbitrary or unfair conduct on the part of referees. In addition there are a few cases in which the failure on the part of the claimant to give notice of the injury to his employer has been excused without reason, but this appears to have been done on the theory that the requirement of notice was a mere formality which might be dispensed with without injury to the parties concerned, a theory which, fortunately, the courts have refused to uphold.

On the whole this study of the court decisions in compensation cases indicates that while the burden of responsibility borne by the employer has been increased, the administration of the law has not been unreasonable or unfair. But a large part of the credit for the equitable character of that administration is due to the restraint imposed by the judicial review of compensation cases. The courts have not only provided an agency for determining and defining the scope of the law and expounding the legal principle of its application in intricate cases where questions of extraterritoriality or interstate commerce were involved, but they have also served to protect the interests of employers and insurance carriers against encroachment by an administrative authority which of necessity, in its endeavor to bring out the facts, must act not only as judge but also as advocate on behalf of unrepresented claimants. The very nature of the proceedings in compensation cases tends to produce an attitude somewhat more favorable to claimants than to the opposing parties. The corrective power of judicial review is needed to maintain a proper equilibrium and to insure an impartial administration of the law.

CHAPTER IV

WORKMEN'S COMPENSATION INSURANCE

APPLICATION OF INSURANCE TO WORKMEN'S COMPENSATION

THE enactment of workmen's compensation legislation created many problems. Among these the uncertainty of cost to the individual employer and the necessity for the establishment of some system whereby payment of benefits would be guaranteed to employees or their dependents made this a natural field for operation of the insurance principle. The situation that faced the employer was very different from that existing under the employers' liability laws, where only the more serious cases gave concern in the matter of costs. Under workmen's compensation laws the employer became liable for practically all injuries which arise out of or in the course of employment, and the common law defenses applicable to employer liability suits were of no avail. Payments to employees must be made promptly and according to scheduled sums graduated on the basis of severity of injury. While these requirements suggest greater stability in costs than under the conditions prevailing in the employers' liability period, the uncertainty in the occurrence of accidents, both as to number and severity, makes employers liable to wide variations in costs from one period to another. This problem has been adequately solved through the application of the insurance principle to the practice of workmen's compensation; and at the same time a system is provided which protects the rights of injured employees to compensation, through making the insurance companies the custodians of benefit funds.

The compensation laws of most states provide for insurance in one form or another. Alabama, Kansas and the territory of Alaska are the only jurisdictions in which neither insurance nor any other form of security which will guarantee the payments of benefits to injured employees is required in

advance. In a few instances state governments have entered the insurance field by requiring employers to insure their compensation liabilities in state-managed organizations exclusively. Since private insurance companies are not permitted to operate in the compensation field in these states, the insurance system is there designated as monopolistic. The territory of Porto Rico also maintains a monopolistic state fund. Ohio is usually included within this group, as private carriers are not permitted to write compensation insurance in the state, but employers are allowed to carry their own risks as "self-insurers", a privilege which is granted only under certain restrictions which, in some respects, are peculiar to this state alone. West Virginia is classed as a semi-monopolistic state in so far as the operation of the state insurance fund is concerned, for while employers are permitted under conditions to pay compensation benefits direct to injured employees and may thereupon insure in a stock company, the restrictions are so great that private carriers are practically excluded.

The remaining thirty-six states and the territories of Hawaii and Alaska permit the operation of private insurance companies in the compensation field, subject to local regulation. In ten of these states, insurance organizations managed by the state exist and compete with the private companies. Four of these are the eastern states, New York, Pennsylvania, Maryland, and Michigan, while the other six are in the Far West.

Table 4 gives a synopsis of the position of state insurance funds in the various states.

The New York State Workmen's Compensation Law¹ offers three alternatives to an employer in securing the payment of compensation:

1. By insuring and keeping insured the payment of such compensation in the state fund, or
2. By insuring and keeping insured the payment of such compensation with any stock corporation or mutual association authorized to transact the business of workmen's compensation in this state.
3. By furnishing satisfactory proof to the commissioner of

¹ New York State Workmen's Compensation Law, Section 50.

116 WORKMEN'S COMPENSATION IN NEW YORK

TABLE 4: CHARACTER OF STATE COMPENSATION INSURANCE FUNDS, BY STATES

(Source: Workmen's Compensation Publicity Bureau)

Monopolistic (7 States, 1 Territory)	Competitive (10 States)	None (26 States, 2 Territories)		
Nevada ⁸	Arizona ^{4, 8}	Alabama	Maine	South
North Dakota ⁷	California ^{4, 9}	Connecticut	Massachusetts	Dakota
Ohio ⁷	Colorado ^{4, 8}	Delaware	Minnesota	Tennessee ⁹
Oregon ⁷	Idaho ^{4, 8}	Georgia	Missouri	Texas
Washington ⁷	Maryland ^{4, 8}	Illinois	Nebraska	Vermont
West Virginia ^{4, 8}	Michigan ^{4, 8}	Indiana	New Hampshire	Virginia
Wyoming ⁷	Montana ^{4, 7}	Iowa	New Jersey	Wisconsin
Porto Rico ⁸	New York ^{4, 8}	Kansas	New Mexico	Alaska
	Pennsylvania ^{4, 8}	Kentucky	Oklahoma	Hawaii
	Utah ^{4, 8}	Louisiana	Rhode Island	

¹ Employers may be permitted to carry their own risks, contributing nevertheless to the surplus of the state fund, but may not thereupon secure indemnity through private insurance.

² Employers may be permitted to carry their own risks, contributing nevertheless to the expense of administering the state fund, and may thereupon secure indemnity through private insurance.

³ These state funds, although competitive in general, are given a monopoly of insurance on public employments.

⁴ The state fund is administered by the same authorities who administer the compensation law.

⁵ Ditto in part; but the tribunal which decides disputes is not interested in the state fund.

⁶ The state fund is administered by an independent management.

⁷ The state fund is subsidized and tax exempt.

⁸ The state fund is self-supporting but tax exempt.

⁹ The state fund is self-supporting and subject to some state taxes (all the state funds are exempt from federal taxation).

¹⁰ An elective state managed fund has been created to provide insurance for coal mining.

his financial ability to pay such compensation for himself, in which case the commissioner may, in his discretion, require the deposit with the commissioner of securities.

Failure to secure compensation by one of these three methods constitutes a misdemeanor, punishable by a fine of not more than five hundred dollars or imprisonment for not more than one year or both.¹

TYPES OF INSURANCE CARRIERS

The choice allowed employers in New York, as well as in many other states, suggests consideration of the conditions which prompted the inclusion of the selective provisions.

¹ *Ibid.*, Section 52.

When workmen's compensation laws were first enacted, various interests became involved in the question of insurance. The state, as well as organized labor, desired unquestioned security for the payment of benefits, the employer desired protection against uncertain losses, and the private insurance interests sensed an opportunity for the expansion of their activities although in an extremely difficult field. Considerations of cost and a desire on the part of employers for a voice in management was responsible for the inclusion of mutual insurance among the forms permitted; while organized labor maintains that state funds can offer cheaper insurance and advocates the establishment of exclusive state insurance organizations, ostensibly on the theory that with less expensive insurance, legislation for increased benefit scales would be more easily secured. State funds are also advocated as a means of caring for bad risks which private companies do not care to insure. A comparison of the four methods of insurance, as permitted under the New York law, will show in general how nearly each fulfills the need of industry and the requirements of the state in protecting the interest of employees.

Stock Companies

The stock insurance companies, as other lines of private business, are operated to make profits for the stockholders. These companies are owned and controlled by their investors, and in carrying on their activities are subject only to the insurance laws of the state. Policy holders, as such, have no voice in the management. Surplus funds in excess of the normal requirements of the business may be returned to stockholders as dividends on their investment. There is, however, a type of stock company which returns a portion of the profits to policy holders as dividends on the premiums paid. These companies, which are very few in number, are known as participating stock companies, while the first group is designated as being non-participating. Another important difference between stock companies and other types of carriers is in the method of operation. The former generally employ the agency system, while mutual associations and state funds generally secure business through the personal solicitation of

118 WORKMEN'S COMPENSATION IN NEW YORK

employees of the head or district offices, no commissions being paid.

The arguments in favor of stock company insurance are based on definite cost and quality of service. In the matter of service, stock companies point to the close contact maintained with policy holders through the broad network of the agency system and in other ways, a situation which is of mutual advantage in the prompt handling of claims and in the promotion of accident prevention work. The research activities along conservational lines carried on by individual carriers, as well as through associations, are constructive and helpful. Because of the participation of stock companies in many lines of casualty insurance on a national basis, an employer is enabled to secure coverage through insuring with a single company except, of course, in the case of compensation insurance in monopolistic states. Another advantage arising from the distribution of risks, both geographically and by kinds of insurance coverage, is the stability which is obtained in the company's business. If the loss experience is unfavorable in one locality or even generally throughout one type of coverage, the company does not feel the effect as severely as would be the case if the business were confined to one branch of insurance in one locality.

The objection to stock company insurance is that the cost is higher than for other forms. This is due principally to the cost of procuring business and to the high expenses of service items. The claim is also made that the agency system prevents as careful a selection of risks as the mutual companies are able to make; but in spite of the opportunity which employers have in the selection of forms of security, the stock companies, through their definite cost and service features, have been able to obtain from year to year a very consistent percentage of the total business.

Mutual Companies

Mutual companies in the workmen's compensation field were organized as cooperative associations for the purpose of obtaining insurance at a cost lower than that of stock companies and of securing to policy holders a voice in the management of affairs. Most of these companies have confined

their operations to one state or to a small group of bordering states, and in some cases have specialized by limiting their activities to one type of industry or to related industries. In the latter group a greater mutuality of interest exists, and the mutual association is able to specialize in handling the underwriting, claim adjustments and preventive work. On the other hand, the company operating in the general field of industry is not limited in its selection of risks and can obtain a better spread for the losses which occur. These companies have, in some cases, entered other fields, such as automobile liability insurance.

The mutual company differs from the stock company in that each individual policy holder is regarded as a part-owner and that he is subject to assessments, if additional funds are required to maintain the solvency of the company. In certain states policies can be written which are not subject to assessment, but in this case the insurance company must maintain reserves equivalent to the capital and surplus of stock companies. The policy holders of mutual companies elect the Board of Directors who act in a capacity similar to that of the corresponding body in a stock company.

An important point of difference between the two types of companies is that, in the case of mutual companies, funds in excess of the usual requirements of the business are returned to policy holders in the form of dividends. Mutual companies are for this reason called participating carriers. Usually the attempt is made to maintain an even rate of dividend payable on policies expiring during a specified period previous to the declaration of the dividends. In some cases, however, a fluctuating rate is paid, based on current business. The first method permits the setting aside of certain amounts when earnings are high, so that dividends may be continued during periods when earnings decline, a condition which might cause a large reduction in the dividend rate or even its complete elimination when the second method is followed. The payment of dividends is made possible through the policy of mutual companies of charging the same initial insurance rates as stock companies and through the lower costs obtained under the mutual plan.

The cost of acquiring business under the agency system of *

120 WORKMEN'S COMPENSATION IN NEW YORK

the stock companies is provided for by allowing 17.5% of the insurance rate for this item. Mutual companies are not subject to as high a cost in obtaining business as stock companies. There is, at the very start, a difference in cost which may be returned to policy holders as dividends. The records of the stock companies which operate in New York State show that in 1925, 17.8% of the earned premiums, based on country-wide experience, was charged to this one item, as against 4% expended by the mutual companies. Other expense items also are, in the aggregate, lower in the case of mutual companies. During 1925 the expense of mutual companies, including the cost of obtaining business, was recorded as 22%, as compared with 41.6% for stock companies. The amount expended by stock companies for losses or direct benefits to injured employees and for medical and surgical aid has been somewhat higher than that of mutual companies. For the entire period from 1914 to 1925 the stock companies operating in New York, excluding those which have ceased writing compensation insurance, have expended 63.4 cents for this item out of every dollar earned, while the mutuals have averaged 56 cents. The New York insurance department records for 1925, based on the country-wide experience of companies writing compensation insurance in New York, show a smaller difference, 67.5 cents for stock companies and 61.7 cents for mutuals. It should be noted, however, that the mutual experience is confined largely to New York State. This is usually attributed to a better selection of risks by mutual companies than is possible under the agency system, since stock companies must take the greater portion of the business secured by their agents. As a result stock companies insure a larger proportion of small concerns which, on the whole, are claimed to be poorer risks than the larger ones.

Some mutual companies advertise a larger dividend rate than that indicated by the normal difference in the expense requirements of stock and mutual companies. In a number of states, where this policy is followed, the insurance department of the state requires these companies to charge a higher insurance rate than stock companies. In many states the

payment of dividends is subject to the approval of the insurance commissioner.

In summarizing it may be said that mutual companies not only point to the "insurance at cost" feature of mutual insurance, but that, by confining their efforts to one state or a single industry, they are able to offer advantages in service to policy holders.

State Funds

The enactment of workmen's compensation legislation carried with it the responsibility that the burden imposed on employers should be borne with the least possible expense. This principle underlies the establishment of state funds, although it is significant that twenty-six states and two territories have refrained from entering the insurance business and have utilized the services of private insurance carriers which operate under conditions of free competition or close regulation to maintain costs at a reasonable level. In states which have adopted the monopolistic plan under an exclusive state fund, legislatures have proceeded on the theory that, competition being expensive, industry would benefit by concentrating the business in one organization in order to eliminate the cost of securing business under the competitive system. Where the state fund operates in competition with private companies, the position is taken that employers should have the opportunity to provide insurance according to their own needs, due regard being given to the protection of the rights of injured employees. It is pointed out that the operation of the state fund provides a check on other carriers and acts as a balance for the entire insurance system, and that it provides a method of caring for bad risks which private carriers do not care to insure.

State funds, created through action of the legislature as state institutions, have received special considerations in that the funds have been subsidized and granted privileges not given to private insurance companies. These advantages vary both in nature and degree in the several states which have competitive state funds, thus making cost comparisons with private carriers difficult. In practically all instances state funds are entirely exempt from state taxes and are in no

122 WORKMEN'S COMPENSATION IN NEW YORK

case subject to federal taxation. In some states the costs of administration are defrayed out of general taxation and the services of other state departments are given without charge, as, for example, the use of the state treasurer's department in caring for the investment of reserve funds and the attention given by the attorney general to the fund's legal matters. The privilege given the state fund in New York of exemption from regulation of rates by the Superintendent of Insurance, permits it to quote rates in general 15% below those required to be maintained by private carriers, but also to exact higher rates in discretion.

The general methods of operation of competitive state funds are very similar to those employed by mutual companies. No agencies are maintained or commissions paid, and surplus funds are returned to policy holders as dividends. At least as far as New York State is concerned, the policy holder is not subject to assessment, as the state guarantees the solvency of the fund, thus removing completely the liability of policy holders for the payment of compensation. This advantage, together with that of lower costs, is most frequently urged in favor of state insurance. While competitive state funds are, as a rule, able to sell insurance much cheaper than stock companies and somewhat cheaper than mutual companies, there are instances where mutual companies engaging in the general field of compensation insurance have shown lower costs. The usual argument against state fund insurance presented to employers is that state institutions are not as efficiently managed as private concerns, that service to policy holders is affected accordingly, and that the principle of government in business involved in such insurance is essentially wrong.

Reciprocal Insurance

Another type of carrier is the reciprocal or inter-insurance exchange which in certain respects bears a relation to the mutual organizations. The essential feature of this form of insurance is that each member insures and is insured by the other members. The business is conducted by an attorney-in-fact who receives his power through the conferring of the power of attorney by the individual members. This type of

insurance is not included among the alternative methods of securing payment of compensation which are provided in the New York law.

Self-Insurance

Under this plan of caring for the liability imposed by workmen's compensation laws the employer pays the entire cost incurred under the law. When his losses are severe, he loses the advantage which comes from self-insurance, but when the cost of accidents is below the average a saving is effected. The term self-insurance is obviously a misnomer, because there is nothing in the system that can be construed as serving the same end as insurance, which is primarily intended to distribute losses. To be sure, an employer may set aside funds based on the cost of insuring with a private company or the state fund from which the payments of benefits are made, but this is merely good financial policy, and there is no assurance that the cost will not be greater than anticipated. If the employer were certain that his losses would not exceed the average of the industry, considerable saving would be effected through self-insurance, since a large portion of the premiums received by insurance carriers is expended in the acquisition of business, administration claim expense and similar items. In New York State the expense loading in the manual rates is equal to 40% of the whole and varies but slightly from this figure in other states. Most responsible employers are able to absorb the cost of the less serious injuries without difficulty, and it is more in connection with death and permanent total disability cases and the more severe permanent partial disabilities that insurance serves industry to the fullest extent. Since in New York State an employee, permanently disabled for life may receive benefits in excess of \$25,000, it is clear that the employer who elects self-insurance is assuming a dangerous liability, especially since catastrophes occurring through unusual accidents, involving more than one person—fire, or the collapse of a building—may occur in any plant. However, it is possible for self insurers to insure against excessive losses and in this way protect themselves. Where an industrial concern employs great numbers of workers with operations in different locali-

124 WORKMEN'S COMPENSATION IN NEW YORK

ties, a spread of exposure may be obtained which will permit self-insurance to be used with fairly satisfactory results. However, with smaller concerns the experiment is subject to grave dangers.

The failure of an employer to complete payments of compensation might seriously handicap the beneficiaries, and the purpose of the law would be defeated. For this reason the privilege of self-insurance cannot be lightly granted. The employer is usually required to satisfy the state officials as to his responsibility as an employer, particularly in regard to his ability to pay all benefits which become due to his employees. In some states bonds are required, while in others securities must be deposited with the state, the amount depending on the normal current liabilities incurred under the law, as well as on the amounts for cases in which benefits must be paid for considerable periods of time. In New York State the latter method is in use.

Advantages of self-insurance are its possibilities as an aid to closer industrial relations and the impetus given to accident prevention. The employer has an opportunity to render a distinct personal service to an injured employee through the close contact which can be maintained and by caring for his needs in a humane and efficient manner. Some employers have made arrangements whereby benefits in excess of those required by law are paid.

From the standpoint of accident prevention a decided incentive is created by self-insurance to reduce the cost, since any saving accrues directly to the benefit of the employer. Where self-insurance is undertaken with these advantages in mind, it may be genuinely advantageous, but in the hands of irresponsible employers the system may be subject to abuse. In the states where the agreement system is permitted in the settling of claims, it is possible for employers to use pressure in securing agreements. Furthermore, organized labor has also opposed self-insurance on the ground that it tends to discriminate against the worker with dependents, since benefits in death cases may be several times greater than when there are no dependents. Objection is also made to physical examinations, which some employers feel are necessary for their own protection to prevent their being charged with the

cost of an injury, slight in itself, but which may be aggravated by a previously weakened or diseased condition of the employee.

THE GROWTH OF WORKMEN'S COMPENSATION INSURANCE IN NEW YORK STATE

An analysis of the business transacted by the three types of compensation insurance carriers in New York State affords a comparison of their relative importance and indicates how extensively the business has grown since the workmen's compensation law became effective in 1914. For this purpose the measures commonly used are those of premiums written or premiums earned during each period.

The premiums *earned* are the gross amount actually received or accrued from underwriting or insuring the liabilities of employers. The premiums *written* in a given year are the charges for insurance, under the policies issued in such year, which will be fully earned only when such policies have expired. The premiums *earned* in a given year are the charges for insurance during such year, whether for policies issued earlier or expiring later. Thus, part of the premiums under policies *written* in any one calendar year will not be *earned* until the following year. Both sets of data are subject to correction, since the figures are reported to the Insurance Department of the State of New York very shortly after the close of the period for which the data are given, and exact information can be had only after payrolls on which premiums are based have been completely audited. The premiums earned are more dependable, since the payrolls have actually been expended before the date of reporting. Under these conditions it is possible to obtain a fairly accurate estimate of the premiums earned even though the auditing has not been completed. The difference between the earned premiums reported and those actually determined at a later date has varied between 3% and 5%. The premiums written are based on the expected payrolls, and for policies written late in the period under consideration, the exact payrolls will not be known for a considerable time after the estimates are made. Tables 5 and 6 show the premiums earned

126 WORKMEN'S COMPENSATION IN NEW YORK

TABLE 5: WORKMEN'S COMPENSATION INSURANCE PREMIUMS EARNED IN NEW YORK STATE, BETWEEN JULY 1, 1914, AND DECEMBER 31, 1925

(Source: Annual Reports of the Superintendent of Insurance)

Calendar Year	Stock Companies	Per Cent of Total	Mutual Companies	Per Cent of Total	State Insurance Fund ¹	Per Cent of Total	Total
1914 to 1916..	\$27,500,555	78.10	\$3,825,292	10.86	\$3,885,329	11.04	\$35,211,176
1917.....	15,818,146	74.12	2,796,381	13.10	2,727,878	12.78	21,342,405
1918.....	23,732,661	74.79	4,580,722	14.44	3,417,459	10.77	31,730,842
1919.....	25,626,616	73.26	5,929,012	16.95	3,426,304	9.79	34,981,932
1920.....	29,426,918	69.09	9,589,838	22.52	3,573,047	8.39	42,589,803
1921.....	27,155,943	69.66	8,721,865	22.38	3,101,730	7.96	38,979,538
1922.....	24,667,269	70.39	7,880,884	22.49	2,496,233	7.12	35,044,386
1923.....	28,761,474	68.46	10,181,626	24.24	3,067,127	7.30	42,010,227
1924.....	31,279,304	67.50	11,340,899	24.47	3,719,832	8.03	46,340,035
1925.....	34,965,401	67.88	12,221,307	23.72	4,325,915	8.40	51,512,623
	\$268,934,287	70.82	\$77,067,826	20.30	\$33,740,854	8.88	\$379,742,967

¹ These data, up to 1918, vary from the data given in the Summary of Business, as published in the Report of the Industrial Commissioner, 1926.

TABLE 6: WORKMEN'S COMPENSATION INSURANCE PREMIUMS WRITTEN IN NEW YORK STATE, BETWEEN JULY 1, 1914, AND DECEMBER 31, 1925

(Source: Annual Reports of the Superintendent of Insurance)

Calendar Year	Stock Companies	Per Cent of Total	Mutual Companies	Per Cent of Total	State Fund	Per Cent of Total	Total
1914.....	\$9,782,125	83.47	\$1,246,843	10.64	\$689,765	5.89	\$11,718,733
1915.....	10,267,291	79.38	1,374,292	10.62	1,293,613	10.00	12,935,196
1916.....	11,275,049	74.52	1,806,198	11.94	2,048,129	13.34	15,129,376
1917.....	16,542,245	75.46	2,684,994	12.25	2,694,851	12.29	21,922,090
1918.....	23,689,439	73.43	4,802,994	15.10	3,332,842	10.47	31,825,276
1919.....	25,668,512	72.83	6,155,475	17.47	3,409,982	9.68	35,233,969
1920.....	30,462,898	69.39	9,640,248	21.96	3,798,305	8.65	43,901,451
1921.....	27,636,313	70.19	8,636,978	21.94	3,100,115	7.87	39,373,406
1922.....	24,784,503	70.08	7,950,768	22.48	2,632,125	7.44	35,367,396
1923.....	27,902,374	67.41	10,251,809	24.77	3,235,535	7.82	41,389,718
1924.....	31,703,972	67.80	11,172,735	23.89	3,883,725	8.31	46,760,432
1925.....	37,616,790	68.65	12,928,610	23.60	4,246,429	7.75	54,791,829
	\$277,331,510	71.05	\$78,651,946	20.15	\$34,365,416	8.80	\$390,348,872

and the premiums written from 1914 to 1925 inclusive. While the two tables are not comparable, they show the difference in the two methods used in making comparisons of the growth of compensation insurance from year to year and of the participation of the different types of carriers. The annual

reports of the Insurance Department of the State of New York show no separation of the premiums earned for the years 1914 to 1916, and these are, therefore, grouped.

From 1914 to 1920 the premiums *written* by all carriers rose steadily from close to \$12 millions in 1914 to nearly \$44 millions in 1920. The next two years showed declines to \$39 millions and \$35 millions respectively. This reduction was due not only to decreased business in this period as compared with 1920, but also to the lower wage rates which became effective after the business depression of 1921. Since 1923 the rise has been consistent, the figure for 1925 being close to \$55 millions. The amounts written by each of the three types of carriers since 1914, together with the percentage of the business written by each, are also shown in Table 6.

Using the premiums *earned* as a basis of comparison, it is seen that the general trend is the same as for the premiums written, with declines during 1921 and 1922. The two sets of data in their aggregate amounts for each year approximate each other very closely, except in 1920 and 1925, the premiums written being somewhat greater than the premiums earned in every year except in 1923. This is to be expected, as the premiums written indicate, to a certain extent, the increased business of the following year. During 1925 the premiums written amounted to \$54,800,000, as compared with \$51,500,000 recorded as the amount of premiums earned. The earned premiums of the stock companies amounted to practically \$35 millions, as compared with over \$12 millions for the mutuals and \$4.2 millions for the state fund.

The comparison of the business transacted by each type of carrier in the first few years after the compensation law became effective with that of the present time indicates a decline in relative volume for both stock companies and the state fund, while mutual companies show a very large increase. For the first two and a half years stock companies did over 78% of the total business, the mutual companies and the state fund each having earned premiums close to 11%. In 1925, the stock companies' business was equal to 68% and the state fund's 8.4%, while the mutual companies' premiums amounted to nearly 24% of the total. The decrease in

128 WORKMEN'S COMPENSATION IN NEW YORK

the business of the stock companies after the first few years would appear to be a natural condition following the development of the mutual companies. A balance has apparently been reached, as both types of carrier during the three years from 1923 to 1925 have maintained their business at a fairly even percentage of the whole.

The state fund experience has shown a very different trend from that of either stock or mutual companies. During the first few years, the business increased rapidly; but after 1916 a steady decline occurred in the proportion of the total business secured by the fund, until a low point was reached in 1922, when the fund transacted slightly more than 7% of the total compensation insurance business, as compared with approximately 13% in 1916 and 1917. In the gradual improvement which followed, the total earned premiums increased from \$2,500,000 in 1922 to \$4,326,000, or 8.4% of the total, in 1925. As the initial rates charged by the state fund have been below those of private carriers (being, in general, 15% lower at the present time), it might be argued that the percentages given in Table 5 do not present a true comparison in that the earned premiums of the state fund, as shown in the table, would be considerably increased if allowance were made for the difference in rates. There is, however, no assurance that the business of the fund would be correspondingly increased if the same rates charged by other carriers were in effect.

For the eleven and a half years, from July 1, 1914 to December 31, 1925, the gross amount of business transacted by all carriers amounted to nearly \$380,000,000. Of this total, 71%, or \$269,000,000, was earned as premiums by stock companies and represents an actual insurance cost to employers, since only a trifle was returned to policy holders under participating stock company policies. The mutual companies are credited with slightly more than \$77,000,000, or 20.3% of the total. Practically 79% of the earned premiums of mutual companies was charged to losses and expenses, the remaining 21% being available for dividends and for surplus funds. This figure indicates, in general, the extent to which, from the standpoint of operations, mutual insurance has been less expensive than stock company insurance. Earnings from interest on surplus funds and reserves, set

aside for catastrophes and for the payment of benefits to employees over extended periods should of course be considered in making exact cost comparisons between stock companies and other types of insurance carriers.

The state insurance fund, during the eleven and a half years recorded, earned premiums of \$33,740,000 or nearly 9% of the total compensation insurance business of that period. Losses and expenses incurred required 87% of this sum, while the remaining 13% and a portion of the interest earnings of the fund made possible the payment of \$4,692,000 in dividends. The surplus fund of \$2,126,000 may, from one point of view, be considered outside of the cost of insurance, since the amount is carried as an unobligated liability except as far as policy holders are concerned. Incidentally, it may be said that the higher percentage of cost over that of mutual company insurance is largely due to the lower initial rates charged by the state fund with a correspondingly lower amount of premiums received on which the percentage of cost is based. The purpose of this discussion is, however, not to make cost comparisons between the various types of insurance, but to use the facts stated in arriving at a figure representing the actual total cost to employers.

It appears from the figures quoted that the actual total cost of compensation insurance to the employers of New York State for the period 1914 to 1925 has been within 6% of the \$380,000,000 previously stated. An estimate of \$54,000,000 for the year 1926 appears reasonable in view of the past experience and existing business conditions. If the cost of self-insurance is added to the above figure, the entire cost of the compensation law to employers during the past twelve and a half years may be determined. Payments of compensation benefits alone by self-insurers have amounted to over \$30,000,000 since 1914, which is only about 50% of the total incurred losses for both compensation and medical and surgical expense. The aggregate of all items, together with an allowance for administration costs for both insured employers and those who carry their own risks, places the total cost of workmen's compensation in New York State, from July, 1914, to January 1, 1927, at not far from \$500,000,000, or an average of \$40,000,000 per year. Similarly,

130 WORKMEN'S COMPENSATION IN NEW YORK

it may be estimated that for the year 1926 the cost has been close to \$63,000,000.

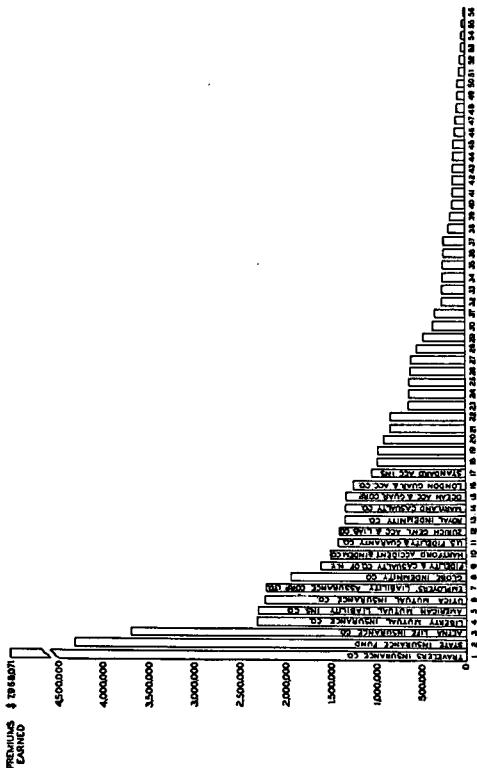
TYPES OF INSURANCE CARRIERS OPERATING IN NEW YORK STATE

It was early recognized that workmen's compensation presented a difficult field for the application of the insurance principle. Experience under employers' liability insurance indicated difficulties which would be encountered, and it was a number of years before the business attained a relatively stable position as far as the number of companies participating in this field of insurance is concerned. It will be recalled that the workmen's compensation law in New York State became effective almost coincidentally with the start of the World War, at the beginning of a period of great economic changes. The problems which the insurance carriers encountered were made more difficult of solution by the rapidly changing economic conditions, although the rising payroll occasioned by wage-rate increases contributed to the stability of the business during the time when the initial problems were being solved and paved the way for the participation of insurance companies, in general, in the compensation field. The development of the compensation business, as indicated by the number of companies operating in this field, has shown steady growth. During 1914 there were forty-four carriers writing workmen's compensation insurance in New York State. This group was composed of twenty-seven stock companies, sixteen mutuals and the state insurance fund. During the next twelve years a number of changes occurred until, in 1926, the number of carriers writing direct insurance had increased to fifty-eight. In addition to the state fund there were thirty-six stock companies and twenty-one mutuals. Twenty-six of the original companies which entered the field in 1914 are included in this number.

Measured by the earned premiums for the year 1925, these companies vary considerably in the size of their operations in New York State. As shown on Chart 2, three organizations stand out prominently as the largest in the field, each having earned premiums of over three million dollars. The first, a

stock company, with nearly eight millions of earned premiums, accounted for 15.5% of the entire business of the

CHART 2: PREMIUMS EARNED BY INDIVIDUAL INSURANCE COMPANIES IN NEW YORK,
1925



state. Second in order is the state fund with earned premiums of about \$4.3 millions, representing 8.4% of the total.

132 WORKMEN'S COMPENSATION IN NEW YORK

The third, a stock company, with \$3.7 millions of earned premiums, did over 7% of the entire business. Combined, the business of these three carriers amounted to nearly \$16 millions or 31% of the business done in the state. Four others, three mutuals and one stock company, did a total business of nine million dollars or 17.5% of the total. Seventeen, or less than one-third of all the companies operating in the compensation field, recorded premiums of over one million dollars. This group was composed of thirteen stock and three mutual companies, and the state insurance fund. Their total business amounted to 39 million dollars, which was nearly 76% of the total for the state. Table 7 gives the earned premiums of the various companies in New York State during the year 1925 for direct insurance written by these companies. As used here, direct insurance refers to the assumption of the entire liability by an employer under the compensation law. A number of companies participate in the compensation business through reinsuring the liabilities of the insurance companies which write direct contracts with employers. In the data given above and in Table 7, no deduction has been made for reinsurance. Some companies also write policies covering the more costly accidents and insure employers against total costs beyond certain limits. These types of coverage are included under the general term of excess insurance and are designed for self-insurers who desire protection against the uncertain costs of the more severe injuries.

THE TECHNIQUE OF RATE MAKING

Rating Organizations

Insurance carriers realized early that cooperative action was necessary to the development of proper rates in the compensation field. As in other lines of insurance, the principle was adopted that rates should be based on the hazards that exist; and as hazards can be measured only in the light of past experience, it was necessary to obtain data in sufficient volume to apply the law of averages which is the basis of all insurance operations. The experience of any one company is not broad enough for rate-making purposes, and it has been

TABLE 7: PREMIUMS EARNED BY INDIVIDUAL INSURANCE CARRIERS IN NEW YORK STATE, 1925

Name of Carrier	Position on Chart 2	Premiums Earned
Aetna Casualty & Surety Co.	56	85,333
Aetna Life Insurance Co.	3	3,671,554
American Employers' Insurance Co.	54	28,656
Columbia Casualty Co.	31	326,130
Commercial Casualty Insurance Co.	24	623,237
Continental Casualty Co.	44	131,465
Eagle Indemnity Co.	36	234,756
Employers' Liability Assurance Corp., Ltd.	7	2,194,272
Fidelity & Casualty Co. of New York.	9	1,596,257
General Accident Fire & Life Assurance Corp., Ltd.	28	524,736
Globe Indemnity Co.	8	1,943,464
Hartford Accident & Indemnity Co.	10	1,480,873
Indemnity Insurance Co. of North America.	21	828,449
Independence Indemnity Co.	26	602,282
London Guarantee & Accident Co., Ltd.	16	1,228,023
London & Lancashire Indemnity Co.	43	131,854
Maryland Casualty Co.	14	1,335,122
Massachusetts Bonding & Insurance Co.	42	143,334
Metropolitan Casualty Insurance Co.	35	248,074
New Amsterdam Casualty Co.	22	822,189
New York Indemnity Co.	27	594,258
Norwich Union Indemnity Co.	47	100,697
Ocean Accident & Guarantee Corp., Ltd.	15	1,329,725
Phoenix Indemnity Co.	49	77,998
Royal Indemnity Co.	13	1,339,029
Standard Accident Insurance Co.	17	1,027,209
Sun Indemnity Co.	45	121,075
Travelers' Insurance Co.	1	7,968,071
Union Indemnity Co.	30	352,790
United States Casualty Co.	20	906,344
United States Fidelity & Guaranty Co.	11	1,407,358
Western Casualty Co.	48	82,375
Zürich General Accident & Liability Insurance Co.	12	1,374,222
Allied Mutuals Liability Insurance Co.	18	969,928
American Mutual Liability Insurance Co.	5	2,274,077
Bakers' Mutual Insurance Co. of New York.	41	147,839
Butchers' Mutual Casualty Co.	53	35,606
Coal Merchants' Mutual Insurance Co.	40	148,913
Empire State Mutual Insurance Co.	50	72,344
Employers' Mutual Insurance Co.	23	628,879
Exchange Mutual Indemnity Insurance Co.	29	467,798
Federal Mutual Liability Insurance Co.	32	267,411
Hudson-Mohawk Mutual Casualty Co.	46	108,315
Interboro Mutual Indemnity Insurance Co.	38	178,442
Jamestown Mutual Insurance Co.	33	266,190
Liberty Mutual Insurance Co.	4	2,318,361
Lumber Mutual Casualty Insurance Co.	25	622,506
Lumbermen's Mutual Casualty Co.	52	39,575
Manufacturers' Liability Insurance Co.	37	232,231
Mutual Casualty Insurance Co.	51	52,638
New York Printers' & Bookbinders' Mutual Insurance Co.	39	164,809
Security Mutual Casualty Co.	34	257,595
State Insurance Fund.	2	4,325,915
United States Mutual Liability Insurance Co.	55	19,745
Utica Mutual Insurance Co.	6	2,228,050
Utilities Mutual Insurance Co.	19	962,286
Total.		\$51,565,864

134 WORKMEN'S COMPENSATION IN NEW YORK

found that the experience of one state alone is likewise inadequate.

At first the stock companies dominated the field, but as other types of carriers became of importance, the need for non-partisan rate making resulted in the organization of independent rating bureaus in a number of states. This decentralization of rate making was followed by a movement for centralization, as it was felt that, since many of the insurance carriers were operating on a national basis, standardized practices should be established, with the further advantage that duplication of effort could thus be eliminated. Since this movement began in 1915, the tendency has been toward complete centralization, until now the work is practically confined to one organization—The National Council on Compensation Insurance. Two other existing organizations which were active during the period of development are the National Bureau of Casualty and Surety Underwriters, a stock company organization, and the National Association of Mutual Casualty Companies, composed of mutual carriers. The former, organized in 1910 under another name, was the original body formed for rate-making purposes in the compensation field, and for a number of years it established and administered rates in a number of states, but this work has been almost completely taken over by the National Council, and its present activities are principally devoted to the interests of stock companies in other fields of insurance. The present work of the National Association of Mutual Casualty Companies lies outside of the realm of rate making and administration and is confined to serving its members in other matters affecting their interests.

The National Council on Compensation Insurance

This organization, organized in its present form in 1923, succeeded the National Council on Workmen's Compensation Insurance, which was in effect a federation of the independent rating organizations then existing in several states, the National Bureau of Casualty and Surety Underwriters, then operating under another name, and the National Association of Mutual Casualty Companies.

At the present time the National Council operates as a

rate-making organization for all the compensation states except those which have non-competitive state funds and two others, Pennsylvania and Delaware, which have independent rating organizations. The National Council functions either as an independent rate-making body or acts in cooperation with the state rating bureaus where such exist. In certain states the administration of rates is performed by the local branches of the Council, in others the independent rating bureaus serve this end, while in certain other states the National Bureau of Casualty and Surety Underwriters carries on the administrative functions.

The Compensation Inspection Rating Board

The first independent, state rating organization to be established as an agency for the administration of workmen's compensation rates was the Compensation Inspection Rating Board of New York State, which was organized in 1914 by the insurance carriers operating in New York State at the suggestion and under the direction of the Superintendent of Insurance of the state. Its membership is composed of all of the stock and mutual companies transacting compensation business in the state, and the state insurance fund. At the present time it has fifty-eight members, comprising thirty-six stock companies, twenty-one mutuals and the state fund. Each group has continuous representation on the governing and on the four subsidiary committees which deal with technical matters. These committees are:

(1) The Committee on Classifications and Rates which formulates the division of risks into classifications and develops underwriting rules, selects the new rates at each general rate revision, hears appeals from decisions made by the staff of the Board with reference to the classification of risks or in setting rates in individual cases and holds hearings in case of grievance by employers as required by the insurance law. The decisions of this committee are subject to review by the Superintendent of Insurance in matters relating to rules, classifications and rates.

(2) Safety Engineering Committee. The work of this committee relates to the Industrial Compensation Rating Schedules, establishes rules and standards in connection with

136 WORKMEN'S COMPENSATION IN NEW YORK

the inspection of manufacturing risks and the revising of rates according to the existing conditions in each particular establishment.

(3) Actuarial Committee. This committee deals with the technical problems involved in determining the principles and methods employed in the selection and use of the statistical data for rate-making purposes and in studies of the effect of schedule and experience rating, and recommends proper rate levels and changes in the rating systems.

(4) Legal Committee. The few legal questions which arise in the work of the Board are referred to this committee.

The routine work of the Board requires a large organization, including a force of inspectors who perform the field work incidental to the proper classifications of individual concerns and to the application of schedule rating. The experience data of each carrier are submitted to the Rating Board, but the actual determination of the rates is performed by the National Council on Compensation Insurance. After agreement on the proper rates, the schedule is submitted to the Superintendent of Insurance for approval. However, the modification of individual rates under the schedule and experience rating plans is entirely in the hands of the Rating Board.

Rate Making

In workmen's compensation insurance the rate is the cost of insurance per \$100 of payroll. Since the payroll for each type of industry is an indirect measure of the exposure of employees to the hazards which exist in that industry, this base is used in the absence of a more direct method of measuring exposure. The premium is the total amount paid for insurance and is obtained by multiplying the payroll by the rate in units of \$100. The insurance policy is the contract which guarantees the payment of compensation to employees according to the provisions of the workmen's compensation law. The standard policy in use covers employers for liabilities incurred under both the compensation and liability laws. The term "losses" is the technical insurance description of the cost of benefits and medical expenses.

* In the making of rates three conditions must be fulfilled.

First, the rate must be adequate, that is, the premium obtained must be sufficient to meet all losses incurred by the insured group as a whole and to cover the expenses of the carriers. Second, the rate must be reasonable. If rates are more than adequate, an unfair charge is made on the policyholder, and the stock insurance companies are adversely affected by policy-holders seeking lower costs through self-insurance, and by loss of business to mutual companies and the state fund. The third requirement is that rates must not be discriminatory. It would be manifestly unfair to group all industries and charge the same rate in each individual case, since different industries are subject to varying hazards. Some experience comparatively few casualties, while others have many. The type of accident varies; in certain kinds of work minor accidents predominate, and in others a greater proportion of serious cases develops.

For these reasons the only true method of determining rates is on the basis of the hazards which actually exist. To accomplish this end, risks are grouped according to types of industry, processes used or by occupations. These subdivisions are called classifications. There are approximately 750 classifications in use in New York State. Since the hazards of individual risks vary even when the type of work is similar, it might appear that this consideration should require the making of a separate rate for each individual case. This, however, cannot be done because the whole idea of insurance is based on the law of averages, and in order to determine the average cost, the accident experience of a large number of risks having similar hazards must be combined. While the experience of an individual company may vary widely from year to year, the average experience of a group of companies is more stable, and the wide variation of individual risks is not experienced. The use of schedule and experience rating, as discussed later, might be considered as an attempt at individual rating; but even when these systems are used, any decrease made in the rates of one concern must be offset by increases in other cases, so that for the classification as a whole the premiums obtained will be the same. The grouping of risks by classifications may also result in the application of more than one rate to the operations of a

138 WORKMEN'S COMPENSATION IN NEW YORK

single concern. For example, a company, having both a machine-shop and foundry, would be charged separate rates for each operation, and the main office employees would be covered by still another rate.

Rate-Making Procedure

The first step in the making of rates is the collection of data regarding payrolls, accidents and losses. Insurance companies report their experience for each state in a standardized manner on a prepared form, known as Schedule "Z". The loss data are shown by classifications and are subdivided according to the several types of disability and medical expense. Detailed data concerning certain types of cases, such as deaths and permanent total disabilities, are also given. Since the disability periods in some accident cases extend beyond the date on which Schedule "Z" is based, the cost of these cases must be estimated. The incurred losses, therefore, represent the amounts actually paid plus the sums set aside as reserves for open cases.

Two reports are made annually; one for the policy year which has just been completed, and the other for the policy year immediately preceding, which is known as the second report for that period. The first report makes it possible to obtain the early data for comparative purposes soon after the close of the policy period, while the second report includes more developed experience and is, therefore, more completely adapted to rate-making purposes.

In New York State, after the data from all companies have been audited and combined by the Compensation Inspection Rating Board, the experience is filed with the National Council on Compensation Insurance, where the actual work of developing rates is performed. Similarly, data from other states are either filed directly with the National Council or transmitted to it through the state insurance board or commission. Where the volume of experience in any classification in any state is deemed sufficient, rates are based entirely on the state's own experience. In the last revision of New York rates, approximately 80% of the premiums were determined on New York experience exclu-

sively, while the remaining 20% were based in part on New York and in part on data from other states.

Pure Premiums

The pure premium is the amount per \$100 of payroll which, when applied to the total payroll of each classification, produces sufficient premium to meet the incurred losses. For example, if the total payroll of a given classification is \$10,000,000 and the total losses for any policy year are \$200,000, the indicated pure premium is \$2.00 per \$100 of payroll. As a matter of fact, pure premiums are calculated separately for the serious and non-serious types of injuries and for the medical costs. In the rate revision, which was completed in 1926, data for the five policy years, 1919 to 1923, were used as a basis.

If the data had been used as taken from the reports submitted, false values would have been obtained, since they show losses as incurred under the compensation law as it stood during each policy year. Since benefit allowances have been increased, it was necessary to bring the data to the basis of the present law. When this was done the modified data for the five policy years were combined, and pure premiums for each classification were determined for the entire period. In this manner a broad exposure is obtained, and fluctuations in the experience of each classification from year to year can be taken into account.

Another factor to be considered is the trend of experience. For example, in the period from 1919 to 1923, the cost increased steadily quite apart from the increase due to amendments to the law. The experience of policy year 1924, as reported in the aggregate rather than by classifications, shows a continued increase in cost. As there was no indication of any decrease at the time of the rate revision, it was felt that the average conditions of 1923 and 1924 would more nearly represent the existing conditions, and the pure premiums developed were modified to the level of these two years.

It is not at all certain that the experience which will develop under the rates thus obtained will meet all expectations. If the future losses are higher than estimated, the insurance carriers will suffer a loss; and if the reverse is true,

140 WORKMEN'S COMPENSATION IN NEW YORK

the public will have paid more than is required to cover the actual cost. To meet this problem, a permanent rate-making policy has been adopted which calls for a rate revision annually, instead of approximately once in two years as in the past. The last three policy years for which data are available will be used in determining the rate level. It is felt that in this way a more equitable distribution of the variations of the actual from the expected experience will be obtained. Thus, in the case of both insurance carriers and employers, a gain in one year will be offset by a loss in another year, and a balance will be obtained.

Expense Loading

So far only that part of the cost of compensation which deals with losses has been considered. In developing an adequate rate, allowance must also be made for the expenses of the insurance carriers. In New York State the published rate is at present made up on the basis of a pure premium of 60% and a 40% expense loading. This expense ratio is based on the larger requirements of stock companies determined from the expense data as reported to the Superintendent of Insurance on Schedule "W". The combined data for all carriers operating in New York State are itemized below. While this analysis shows that the actual expense cost is in excess of 40%, the Superintendent of Insurance has allowed only that amount, presumably for the purpose of stimulating economical operation.

SERVICE AND ADMINISTRATION			
Claim expense.....	8.0%		
Home Office Administration.....	7.5		
Inspection and Bureau.....	2.5		
Payroll audits.....	2.0	20.0%	
ACQUISITION AND TAXES			
Acquisition (cost of securing business).....	17.5%		
State and Federal Taxes.....	2.5		
State Industrial Commissioner (cost of administration of compensation law).....	1.8	21.8%	•
Total.....		41.8%	

The addition of the expense loading to the amount of the pure premium, together with one cent for catastrophe load-

ing, produces what is known as the manual rate. This is the published rate. In New York State, it can be modified only through the application of merit rating.

Merit Rating

While the classification of risks according to the type of industry, processes or occupations is in accordance with the general principle of non-discrimination in the making of rates, there are further refinements which must be made if the principle is to be applied in an equitable manner. Between two risks in the same classification, great differences may be found in the physical conditions which exist on the premises of the insured, and a wide divergence may develop in the accident experience of the two risks. In one case, machinery may be unguarded and conditions in general be such that accidents tend to occur in greater number and of a more serious nature than in a plant where every reasonable precaution is taken to avert injuries to employees. If the same manual rate were applied to each of these risks, without due allowance for the difference in the existing conditions, an injustice would be done. Merit rating overcomes what would otherwise be a serious defect in rate making, and also supplies an incentive to accident prevention work.

From the standpoint of the insurance companies, merit rating tends to offset the difference between the stock and mutual companies. If it were not possible to modify rates the concerns with a low accident experience would naturally seek cheaper insurance, and the stock companies would be left with undesirable risks. In such case, since rates are based on the total experience of all carriers, the rates for the stock companies would be inadequate.

Schedule Rating

Through schedule rating the manual rate is adjusted upward or downward in individual cases, according to the physical conditions which exist in a plant. In order to make the system practical, it has been limited in application to conditions capable of being measured from the standpoint of their influence on the occurrence of accidents. No risk for which the annual premium is less than \$50 is subject to

142 WORKMEN'S COMPENSATION IN NEW YORK

schedule rating. The following items are considered in arriving at a rating:

- Elevators
- Power Transmission
- Machines
 - Driving Mechanism
 - Moving Parts
 - Point of Operation

Allowances are also made for the use by employees of foot and eye protection devices in certain classifications where particular hazards exist, as in foundry operations.

The influence of the various elements in their relation to accidents has been analyzed in great detail for each classification which is subject to schedule rating. In the studies made, a large number of accidents were considered and a definite weight was assigned to each type of machine or hazard according to the extent to which it entered into the cost of accidents. In this way the pure premium portion of the rate for any classification can be divided, each part representing the cost of the accidents per hundred dollars of payroll, which for the classification as a whole is expected to be incurred through each type of hazard. For example, in classification 2883, Furniture Manufacturing, the divisions of the pure premium are as follows:

	Per Cent
Elevators	1.5%
Power Transmission	1.5
Machines	
Driving Mechanism	1.0
Moving Parts	7.0
Point of Operation	55.0
	<hr/>
Total	66.0%

The remaining 34% is known as the residue and represents the cost of accidents expected from hazards, other than those represented by the machine elements. This residue is also subject to modification.

These component parts of the rate are increased or decreased, depending on whether the conditions measure up to set standards. Perfect guarding or the complete use of foot and leg protection, where this is required, would not, however, completely eliminate the pure premium as even under

these conditions hazards still exist. For example, while the use of goggles might prevent certain injuries, in other cases the effect of accidents would only be lessened. The purpose of schedule rating is to increase or decrease the amount of the pure-premium factors in proportion as the hazards are made smaller or greater by the existing conditions. The pure premium factor can be reduced to zero only by the elimination of the entire hazard. If there were no elevators in a plant, the pure premium part of the rate charged for elevator hazards would not apply, but if they are present the pure premium factor is increased or decreased according to the conditions.

Allowances are also made for the existence of a safety organization, hospital and first-aid facilities. While the effect of these so-called "morale" items cannot be exactly measured, they are encouraged by granting a reduction in the rate when they compare favorably with an approved standard. These credits are considerable, because a maximum of 5% is allowed in the case of safety organizations and the same amount for an emergency hospital. A credit of 1% is granted for approved first-aid facilities and 3% for a dispensary with a nurse in attendance. No credit is granted when these facilities are lacking or are not in accordance with approved standards.

A further reduction in the rate up to 10% is granted for reduced accident costs resulting from effective safety organization. This is a further attempt to bring about a reduction in accidents under the schedule-rating plan through providing an incentive to maintain the proper functioning of the safety organization.

The first step in schedule rating involves standardized inspection of the plant of the insured to determine the actual physical conditions as to the number and extent of the existing hazards which are capable of being measured, and the extent to which approved protection has been adopted. Data regarding safety organizations and their activities, as well as information as to medical and similar service, are also obtained. Upon submission of the reports, the modification for each particular item of the machine hazards is calculated, and the pure premium factors raised or lowered accordingly. The credits for safety organization and first-aid or hospital

144 WORKMEN'S COMPENSATION IN NEW YORK

services, if any are granted, are calculated as a direct percentage of the manual rate. At least theoretically, the credits given should equal the charges made in any one classification, since the manual rate has been calculated to provide sufficient premiums to cover the losses which are expected to occur. If the average rate, developed after the individual rates are modified by schedule rating, does not equal the manual rate, either the insurance carriers or the insured profit at the expense of the other. As a matter of fact, the credits granted have consistently been greater than the charges and at the expense of the insurance companies. This is principally due to the giving of credits for the "morale" items which could not be offset, as no charges were made in the case of concerns which were lacking in these facilities.

There can be no question that schedule rating has been a decided influence in improving physical conditions in manufacturing concerns and has had a direct bearing on the creation and proper functioning of organizations in individual plants which deal with the problem of accidents from the point of view of their elimination through safety activities and of limiting their effects, as far as possible, when they do occur, by providing prompt and efficient first-aid medical and hospital service. The exact extent to which schedule rating has been an influence in these matters is of course impossible to determine. It is safe to say, however, that employers generally have been anxious to secure reductions in the cost of their insurance through taking advantage of the opportunities offered by schedule rating and that large groups have actually secured cheaper insurance in this way.

The distribution of credits and charges may be seen by referring to Table 8. The 9,606 risks analyzed were rated under the Industrial Compensation Rating Schedule. The adjusted rates on these risks became effective during the 1924 calendar year. In this table the risks are grouped according to the amount of annual premiums which would have been paid had each risk been subject to the manual rate without modification by schedule rating. The number of risks in each premium group is also shown, together with the amount of premiums which would have been collected at manual rates. For comparison, the actual premiums for each

WORKMEN'S COMPENSATION INSURANCE 145

TABLE 8: ANALYSIS OF SCHEDULE RATING¹

A. Distribution by Premium Groups for all Risks

Average Annual "Manual" Premium	Number of Risks	Annual Premium at Manual Rates	Total Credits Section 450-460	Schedule Adjusted Premium	Credit Pure Premium Section %	Credit Section 450-460 %	Variation from Manual %
All Risks	9,606	\$13,360,585	\$561,272	\$12,743,606	.4	4.2	4.6
Under \$500	4,679	1,224,666	12,482	1,203,594	.7	1.0	Reduction 1.7
\$500 and " 750	1,260	773,964	13,370	770,759	1.3*	1.7	4.4
" " 1,000	793	687,904	11,628	682,329	.9*	1.7	.8
1,000 " " 1,500	896	1,096,820	24,396	1,089,915	1.6*	2.2	.6
1,500 " " 2,000	511	883,168	24,043	864,628	.7*	2.7	2.0
2,000 " " 3,000	539	1,306,740	43,044	1,265,334	1.4	3.3	3.2
3,000 " " 4,000	293	1,003,377	38,513	976,514	1.1*	3.8	2.7
4,000 " " 5,000	147	651,988	24,537	622,833	.7	3.8	4.5
5,000 " " 7,500	307	1,213,296	56,079	1,197,098	.4	4.3	4.9
7,500 " " 10,000	103	884,603	40,676	814,724	1.0	4.6	5.6
10,000 " " 20,000	121	1,593,546	97,148	1,477,880	1.2	6.1	7.3
20,000 " Over	57	2,001,513	175,356	1,762,928	3.2	8.7	11.9

B. Distribution by Premium Groups for Risks Receiving Credits

Total Credits	6,186	\$9,626,941	\$507,190	\$8,750,852	3.8	5.3	9.1
Under \$500	3,101	787,773	9,589	735,580	5.4	1.2	Reduction 6.6
\$500 and " 750	729	446,605	11,138	418,461	4.2	2.5	6.7
" " 1,000	453	391,619	9,607	364,235	4.5	2.5	7.0
1,000 " " 1,500	524	642,988	20,076	600,190	3.5	3.1	6.7
1,500 " " 2,000	334	575,805	19,297	536,184	3.5	3.4	6.9
2,000 " " 3,000	372	905,997	37,038	836,292	3.6	4.1	7.7
3,000 " " 4,000	188	644,943	31,855	594,834	2.9	4.9	7.8
4,000 " " 5,000	105	467,066	21,346	429,200	3.5	4.6	8.1
5,000 " " 7,500	151	913,288	50,904	833,376	3.2	5.6	8.8
7,500 " " 10,000	77	658,239	35,644	590,765	4.9	5.4	10.3
10,000 " " 20,000	97	1,287,495	92,894	1,149,692	3.5	7.2	10.7
20,000 " Over	55	1,903,123	167,542	1,662,083	3.9	8.8	12.7

C. Distribution by Premium Groups for Risks Receiving Charges⁴

Total Charges	3 420	\$3,733,644	\$54,082	\$3,992,754	8.4	1.4	6.9
Under \$500	1,578	436,893	2,893	468,014	7.8	.7	Increase 7.1
\$500 and " 750	531	325,359	2,232	352,298	9.0	.7	8.3
" " 1,000	340	296,285	2,021	318,094	8.0	.6	7.4
1,000 " " 1,500	372	453,832	4,320	489,725	8.9	1.0	7.9
1,500 " " 2,000	177	306,363	4,746	328,444	8.7	1.5	7.2
2,000 " " 3,000	167	400,743	6,006	429,042	8.6	1.5	7.1
3,000 " " 4,000	105	338,434	6,658	351,680	8.3	1.8	6.5
4,000 " " 5,000	42	184,922	2,991	193,633	6.3	1.6	4.7
5,000 " " 7,500	56	340,008	5,115	358,762	7.0	1.5	5.5
7,500 " " 10,000	26	226,164	5,032	243,959	10.0	2.2	7.8
10,000 " " 20,000	24	306,051	4,234	328,188	8.6	1.4	7.2
20,000 " Over	2	98,390	7,814	100,915	10.5	7.9	2.6

¹Compensation Inspection Rating Board, Statistical Analysis of Risks Rated under the Industrial Compensation Rating Schedule Effective on Oct. 1, 1923, New York, N. Y., Mar. 6, 1925.

* Refers to credit for safety organization and first-aid or hospital service—"morals" items.

† Refers to credit or charges for physical conditions.

⁴Charge, referring to an increase in the insurance rate.

group under the modified manual rates are given. The credits for safety organization and first-aid or hospital services are shown both by amounts and on a percentage basis. The credits and charges for the pure premium section refer entirely to the rate modifications made in accordance with the physical conditions. In Part A is shown the summary for all risks, while Parts B and C show the distribution separately for those risks which received credits in the one case and those which were subject to charges in the other.

One significant feature of the analysis is that of the total number of risks, 6,186 obtained credits, while only 3,420 were subject to an increase in the manual rate. It is interesting to note also that the average credit given for physical conditions was 3.8%, while the average charge was 8.4%. These are the two items which should offset each other exactly if a balance is to be obtained in the schedule-rating system. The analysis shows that this has almost been accomplished, the wide differences in the percentages being overcome by the smaller number of risks having charges. It is also important to note that the credit given for the "morale" items in the case of the risks receiving credits for physical conditions, as shown in Part B, was 5.3% on the average, as compared with a credit of 1.4% in the group shown in Part C which was charged a higher rate than the manual. It is quite natural that a plant having substandard physical conditions should also be lacking in the means of accident prevention and other service as represented by the "morale" items. The entire reduction from the manual rate for the first group of risks, when considering both physical and "morale" items, was 9.1%, as against a total charge of 6.9% for the smaller group.

In the analysis of credits and charges by size of risks, it is to be noted that in the case of risks which received credits, as shown in Part B, the amount of credit for physical items did not vary greatly between risks of different sizes, but that in the case of the "morale" items the larger the risk the greater was the percent of credit given. This is reflected in the data showing the total reduction from the manual rates. In Part A, where all risks are combined, this condition is very marked but not to the same extent and is also reflected in the data

showing the total reduction from the manual rates, at least in the risks in which the premiums are \$4,000 or above. This is to be expected, as the larger plants are in a better position to maintain a complete safety organization and provide complete medical and hospital service. At the same time it is shown that mere size does not always indicate good conditions, as may be observed by comparing the larger risks indicated in Parts B and C, although it is significant that fewer large risks in proportion to risks of smaller size are included in the group which paid a rate greater than the manual rate.

Experience Rating

The use of experience rating in workmen's compensation insurance is a further application of the principle that rates should be based on the actual hazards that exist in individual plants. Unlike schedule rating, this system can be applied to all types of risk. While schedule rating is limited to the consideration of certain physical hazards and "morale" items, experience rating allows for all differences in the conditions which exist between risks. There is no duplication in experience rating. Schedule rating is a system of reward for the elimination of hazards and for the promotion of preventive activities, while experience rating provides the rewards for the results actually achieved.

The principles underlying the present experience rating were developed in 1918, but in its present form the plan dates from 1923. Prior to 1918, two plans were tried, but were discarded as unsuitable. In actual practice in New York State, experience rating is limited to risks where the premium at manual rates is not less than \$1,650 for the experience period, which cannot be less than one year or more than four years, except that a risk, which has carried on operations in the state for not less than two years during the experience period considered, may qualify if the premiums have not been less than \$825 for the two-year period. The entire experience of the risk up to four years must be used in computing the modified rate, but the experience of the year prior to the date of the policy is disregarded. These limitations are somewhat arbitrary but have been adopted for

148 WORKMEN'S COMPENSATION IN NEW YORK

practical reasons. The computation of the modified rate is performed by the Compensation Inspection Rating Board from data submitted by the insurance carriers which have insured the risk during the experience periods considered. The rates which are subject to revision by experience rating are the modified manual rates obtained after adjustments have been made by schedule rating or in risks where schedule rating is not applicable by using the manual rates. These rates are known as the subject rates.

The determination of experience rating deals with two groups of experience data: one is the average experience of the entire classification and the other is the experience of the individual risk. The influence of the volume of each risk's experience in producing the average experience for the classification as a whole is taken into account in the rating plan, when comparing the experience of the risk to the average for the entire classification, by assigning a weight to the risk's experience depending on its volume.

Losses are considered in two parts: normal and excess losses. In reporting the experience of individual risks, deaths and permanent total disability cases are reported separately at an average value of \$6,950. Of this amount \$1,000 is reported as a normal loss and the remainder as an excess loss. All other cases are grouped, the normal losses being \$1,000 for accidents covered by 1925 policy contracts and somewhat less for other policy years.

Medical costs are also reported separately, anything under \$100 being considered a normal loss. In calculating the revised rate obtained by experience rating, the normal losses and the normal medical costs are given a greater weight than the amount of excess losses. In this way employers whose experience is worse than the average are charged less in proportion for the more serious accidents, such as death and permanent total disability, than for those which do not exceed the normal limit in cost. The formulæ are so adjusted that a charge for a single accident cannot be more than 20% of the premium, 15% of which may be charged to the normal indemnity and 5% to the excess indemnity. The reason for this limitation is that it is considered unjust to make a charge for a single accident which may occur in an

entirely fortuitous manner and as a result of causes over which management has no control. The complaint has been made that employers are charged for the very serious cases through experience rating and are thus deprived of the very protection for which they secured insurance. As a matter of fact, they are not charged in proportion to the cost of these injuries, inasmuch as an average value of \$6,950 is taken as the cost and the portion of this amount over \$1,000 is not given as much weight as the normal loss.

The extent to which rates are modified under experience rating is much more marked than under schedule rating—a situation which is to be expected in view of the differences in the two systems. The application of schedule rating is limited, in part, to certain physical conditions. In dealing with these, as well as with the more general “morale” elements, more or less intangible conditions are being used as the basis of rate modification. In experience rating the definite experience of the risk in its relation to the whole experience of similar risks is the basis of rate adjustment. In so far as this experience is an indication of future experience, wider deviation from the average rate of the class than is permitted under schedule rating is justified.

The amounts of the credits given and charges made through experience rating may be observed from Tables 9 to 11, which show the analysis of over 10,000 risks on which the adjusted rates became effective during the calendar year 1924. These data have been prepared to show (1) the effect on all risks according to the amount of premiums which would have been paid if experience rating had not been used in modifying the premium; (2) the distribution of the number of risks in groups depending on the percentage of credits or charges; and (3) the range of these departures from the subject rate in the different premium groups together with the average amount and the number of risks considered. Since the amount of premiums obtained from the entire group after rates are modified by the experience rating plan must be sufficient to cover all losses and expenses incurred, a balance should be effected in this system through offsetting the amount of credits by the amount of charges. In actual practice, however, it has been found that a balance is not

150 WORKMEN'S COMPENSATION IN NEW YORK

TABLE 9: ANALYSIS OF EXPERIENCE RATING; SUMMARY BY PREMIUM GROUPS, 1924

Average Annual "Subject" Premium	Number of Risks	Annual Premium at Manual Rates	Annual Subject Premium	Annual at Final Adjusted Rates	Schedule Reduction from Manual %	Experience Reduction from Subject Premium %	Total Reduction from Manual %
All Groups	10,666	\$19,824,488	\$19,353,085	\$18,482,893	2.4%	4.5%	6.8%
Under \$500	2,942	\$1,179,237	\$1,165,945	\$1,167,310	1.1	.1 ¹	1.0
\$500 to 750	2,256	1,379,949	1,372,412	1,363,229	.5	.7	1.2
750 " 1,000	1,253	1,087,413	1,083,673	1,077,033	.3	.6	1.0
1,000 " 1,500	1,385	1,696,481	1,682,966	1,648,658	.8	2.0	2.8
1,500 " 2,000	693	1,207,236	1,190,215	1,153,255	1.4	3.1	4.5
2,000 " 3,000	771	1,900,690	1,879,171	1,799,374	1.1	4.2	5.3
3,000 " 4,000	399	1,397,965	1,372,760	1,332,645	1.8	2.9	4.7
4,000 " 5,000	256	1,169,721	1,141,938	1,085,936	2.4	4.9	7.2
5,000 " 7,500	295	1,833,316	1,786,886	1,700,359	2.5	4.8	7.3
7,500 " 10,000	139	1,216,547	1,186,156	1,136,078	2.5	4.2	6.6
10,000 " 20,000	187	2,618,093	2,525,049	2,377,869	3.6	5.8	9.2
Over 20,000	90	3,137,840	2,965,914	2,641,147	5.5	10.9	15.8

¹ Charge, referring to an increase in the insurance rate.

TABLE 10: ANALYSIS OF EXPERIENCE RATING; AVERAGE PER CENT AND RANGE OF CREDITS AND CHARGES BY PREMIUM GROUPS, 1924¹

Premiums	Experience Departure from Subject Premium					
	Credits			Charges		
	Range	Average	Number of Risks	Range	Average	Number of Risks
Under \$500	0 to 12.5	5.2	2,036	0 to 54.3	13.2	823
\$500 to 750	16.1	8.4	1,470	68.4	14.3	741
750 " 1,000	20.5	9.9	786	67.8	15.7	450
1,000 " 1,500	26.2	11.8	866	61.2	15.0	494
1,500 " 2,000	27.1	13.6	438	57.7	15.7	241
2,000 " 3,000	39.0	14.6	516	61.6	17.7	240
3,000 " 4,000	40.5	16.5	258	63.5	22.8	136
4,000 " 5,000	44.8	19.0	168	65.8	22.3	87
5,000 " 7,500	46.0	18.5	192	66.9	21.5	97
7,500 " 10,000	48.5	19.6	87	70.0	21.8	51
10,000 " 20,000	50.3	21.0	115	66.7	19.8	68
Over 20,000	62.2	22.6	62	61.1	20.0	27
Total . . . . .	..	18.6	6,994	..	16.2	3,455

¹ Compensation Inspection Rating Board, "Statistical Analysis of Risks Rated Under the Industrial Compensation Rating Schedule." Effective October 1, 1923.

WORKMEN'S COMPENSATION INSURANCE 151

TABLE 11: EXPERIENCE RATING ANALYSIS; FREQUENCY DISTRIBUTION OF CREDITS AND CHARGES, 1924¹

Per Cent of Deviation from Subject Premium	All Premium Groups		
	Number of Risks	Annual Subject Premium	Experience Departure from Subject Premium %
All Risks	10,666	\$19,353,085	4.5%
Total Credits	6,994	12,695,038	16.2
Over 45%	11	157,967	53.7
40% to 45%	19	280,313	41.8
35% " 40%	45	559,316	37.4
30% " 35%	83	645,483	32.6
25% " 30%	180	975,382	27.7
20% " 25%	348	1,413,595	22.9
15% " 20%	568	1,543,238	18.0
10% " 15%	1,317	2,210,166	12.9
5% " 10%	2,726	2,767,357	7.9
Under 5%	1,697	2,142,221	2.9
Normal	217	300,203	..
Total Charges	3,455	6,357,844	18.6
Under 5%	906	1,567,432	2.9
5% to 10%	733	1,080,141	8.0
10% " 15%	569	956,416	13.1
15% " 20%	373	667,425	17.7
20% " 25%	240	581,396	22.9
25% " 30%	169	285,999	27.8
30% " 35%	118	281,524	33.0
35% " 40%	106	247,584	37.9
40% " 45%	69	177,402	43.2
Over 45%	172	512,525	64.3

¹ Compensation Inspection Rating Board, "Statistical Analysis of Risks Rated Under the Industrial Compensation Rating Schedule." Effective October 1, 1923.

obtained, and the amount of credits has been greater, thus causing a loss to insurance carriers. In the particular group shown in Table 9 this amount was 4.5% of the subject premiums. The amount of off-balance which developed under the schedule rating plan for this same group was 2.4%, making a total credit given at the expense of the insurance companies of 6.8% on nearly \$20,000,000 of premiums, a loss of about \$1,350,000. Efforts have been made to effect a balance in the plan, but as yet it has not been accomplished.

The distribution of risks by the amount of credit received or charges made is shown in Table 10. As the amount of the credits increased, the number of risks in each group decreased. The number of risks obtaining credits was 6,994, as against 3,455 in the other group, a ratio greater than two to

152 WORKMEN'S COMPENSATION IN NEW YORK

one. The premium volume was also in the same ratio, showing that the smaller number of risks has a greater influence in determining the average experience. If the average experience may be taken as a standard, this condition may be interpreted as meaning that the majority of risks subject to experience rating is above the standard. Table 11 shows that the average for the group receiving the largest percentage of credit, which included eleven risks, was 53.7% while the charges made in 172 cases averaged 64.3%. The range of credits in each premium, as shown in Table 10, shows that the average credit increased with the size of the risk, while the average charge did not increase in the same proportion, an indication that, as a rule, the larger the risk the better the experience. This comparison must be made on the basis of the trend of the average credits and charges, because the upward trend of the credits is no indication of the experience between risks, since the larger the plant, the greater is the credibility which is given to the experience of the risks and which results in larger credits, as well as larger charges, as the volume of premium increases. The size of a risk, however, is no indication that its accident experience is better than the average, as indicated by the range of charges made in the larger premium groups.

INCURRED LOSSES AND LOSS RATIOS

The cost of compensation payments to beneficiaries, together with the medical and surgical expenses involved, is known by insurance carriers as losses. The ratio of losses to the earned premiums is the loss ratio. Expressed in another way, this item might be considered as that part of each dollar received as premiums which is devoted directly to the benefit of employees. Usually, in speaking of the loss ratio, the term is applied to the experience of a company as a whole or all companies combined, but it should be understood that the term can also be used in relation to the premiums and losses of any one of the many industrial groupings or classifications.

The other expenses incurred by insurance carriers are also expressed as a ratio in terms of the earned premiums. This is known as the expense ratio. Under the present rate-making regulations in New York State, 60% of the rate is calculated

WORKMEN'S COMPENSATION INSURANCE 153

as being sufficient to cover losses, while the remaining 40% is allowed for expenses. This expense allowance was originally placed in 1914 at 33 $\frac{1}{3}$ % of the rate, but has been increased several times until it reached the present amount. During the war, an additional 5% surcharge was permitted for increased expenses due to abnormal conditions. This made the expense ratio from January 1, 1918 to June 30, 1920 equal to 41.9% of the rate. The difference between the expense ratio allowed during the various periods since 1914, and unity gives the expected loss ratio of the period.

Table 12 shows the developed loss ratios for a number of policy years since 1914. The experience of the state fund is not included in this table, as this organization has only recently submitted its experience for rate-making purposes. The data for each policy year given represent the total experience of those companies which were transacting workmen's compensation insurance in New York State on December 31 of the latest calendar year shown under such policy year. A policy year differs from a calendar year in that the period covered may extend over two years, since all policies written in any one calendar year are classified as being policies of that year, although the last policy written in any calendar year may not expire until the end of the following year. Consequently the loss experience covered by any one policy year has been actually obtained during the space of two full years. In this way the experience of one policy year overlaps to a certain extent that of the next policy year. Furthermore, in some accident cases the payments of compensation may extend over long periods, and the actual cost of medical and surgical treatments in certain cases may not be known until long after the accident experience is reported to the insurance department. This condition necessitates an estimate at the time of reporting as to the probable cost of cases where payments have not been completed. As time goes on, more and more cases of any one policy year are completed and a more accurate estimate of the actual cost is obtainable. This accounts for the differences, observed in Table 12, between the amounts of losses estimated at the close of the policy year, as shown in the second report for each policy year, and the developed losses after a few years have passed.

**TABLE 12: PREMIUMS, LOSSES AND INDICATED LOSS RATIOS,
BY POLICY YEAR OF ISSUE**

(Source: Annual Report of the New York State Superintendent of Insurance, 1926)

Calendar Year	Premiums Earned	Losses Incurred	Indicated Loss Ratio
		Policy Year 1914	Per Cent
1914.....	\$5,725,769	\$2,792,947	48.8
1915.....	12,417,446	5,969,588	48.1
1916.....	12,510,607	6,468,102	51.7
1917.....	12,540,769	6,556,120	52.3
1918.....	12,549,915	6,597,473	52.6
		Policy Year 1915	
1915.....	\$5,044,586	\$3,265,913	64.7
1916.....	12,047,350	8,200,319	68.1
1917.....	12,252,469	8,151,820	66.5
1918.....	12,266,792	8,218,438	67.0
		Policy Year 1916	
1916.....	\$5,392,368	\$5,207,428	96.6
1917.....	14,681,002	10,229,541	69.7
1918.....	15,420,264	10,829,018	70.2
1919.....	15,442,711	10,874,751	70.4
		Policy Year 1917	
1917.....	\$8,649,737	\$5,447,356	63.0
1918.....	24,078,540	11,746,169	48.8
1919.....	24,682,443	12,415,652	50.3
1920.....	24,623,687	12,814,065	52.0
		Policy Year 1918	
1918.....	\$12,934,915	\$7,059,478	54.6
1919.....	29,477,318	17,251,914	58.5
1920.....	30,322,074	17,096,682	56.4
1921.....	30,451,808	17,197,495	56.5
		Policy Year 1919	
1919.....	\$13,225,480	\$9,111,783	68.9
1920.....	35,135,643	19,409,867	55.2
1921.....	36,592,774	19,658,117	53.7
1922.....	36,604,492	19,674,318	53.8
1923.....	37,034,550	19,845,206	53.6
		Policy Year 1920	
1920.....	\$16,131,800	\$11,303,915	70.1
1921.....	37,408,579	19,150,732	51.2
1922.....	38,233,154	18,950,947	49.6
1923.....	38,391,892	19,064,849	49.7
1924.....	38,405,468	19,583,992	51.0
		Policy Year 1921	
1921.....	\$13,150,908	\$9,408,151	71.5
1922.....	30,836,329	17,250,150	55.9
1923.....	31,779,221	17,923,697	56.4
1924.....	31,852,936	18,749,258	58.9
1925.....	31,712,770	18,907,603	59.6
		Policy Year 1922	
1922.....	\$14,050,231	\$11,017,764	78.4
1923.....	35,445,153	22,843,212	64.5
1924.....	36,895,510	24,225,862	65.7
1925.....	36,883,794	24,409,056	66.2
		Policy Year 1923	
1923.....	\$15,540,560	\$13,873,933	89.3
1924.....	39,510,453	28,242,351	71.5
1925.....	40,909,797	28,462,170	69.6
		Policy Year 1924	
1924.....	\$17,142,942	\$15,231,829	88.9
1925.....	41,772,546	28,450,995	68.1
		Policy Year 1925	
1925.....	\$21,205,872	\$16,147,414	76.1

Differences in the premiums earned for any one policy year are due to the difference between the reported payrolls and the payrolls actually determined after complete audits. The relatively low amounts given as of the end of the year in which policies were written is accounted for by the fact that many of the policies do not expire until some time during the following year, so that the experience for the first year shown under each policy year is not a complete policy-year record. As will be noted, it is not until the third reporting that a real indication of the actual loss ratio is obtained. By this time some of the accident cases are nearly three years old, while others may be less than a year old. For example, an accident which happened early in 1914 would be covered in policy year 1914. On the third reporting as of December 31, 1916, this case, if not already completed, would be developed up to nearly three years. On the other hand, an accident which was covered by a 1914 policy-year contract written at the end of 1914 and which occurred late in 1915 would only be developed something over a year in the report submitted as of the end of 1916. The average development would probably be of about two years' duration.

The experience from year to year, as will be observed from the table, has varied considerably. Under the 1914 policy year contracts, less than 53 cents out of every dollar collected as premiums was expended directly for compensation benefits and for the medical item. For the policies issued during 1915 and 1916 the stock insurance companies experienced a loss. The loss ratio was 67% and 70.4% respectively. The difference between these figures and 100% was not sufficient to cover the expenses incurred. Under policies issued during the next four years the loss ratio varied between 56.5% for the 1918 policy year and 51% for the policy year 1920. These low percentages resulted in high profits for the stock insurance companies and permitted the mutuals to make high dividend returns to policy holders. Although there were certain rate increases during this period which were made in the light of the bad experience of policy years 1915 and 1916, as well as to cover the additional cost of amendments to the law and of an indicated increased expense ratio, the main influence which was responsible for the low loss ratios was the

156 WORKMEN'S COMPENSATION IN NEW YORK

substantial wage-rate increase which took place during the period. Naturally, if rates are calculated on the payrolls during a period when wage rates are comparatively low and if rates are not decreased in proportion to payroll increases, the effect will be reflected in a low loss ratio if other conditions remain relatively constant. During the period from 1917 to 1920 it was impossible to forecast the extent of wage increases. Since rates lagged behind these changes, the insurance carriers, in general, profited accordingly.

Under the policies issued in 1921, the rate level proved to be adequate from the insurance companies' standpoint and reasonable as regards the cost to employers. The developed loss ratio amounted to 59.6% which, together with the 39% calculated as being sufficient for expenses, made the total cost 98.6% of the earned premiums, a close approximation to ideal conditions. Since that time the experience has been very much against the insurance carriers. Although the experience under the policy year 1924 has not developed sufficiently, it seems to indicate that the stock companies were subjected to losses on policies written in that year, particularly in view of rate reductions which were made during 1923. Experience for the policy year 1925 should be more favorable because rates were increased during the year to offset an indicated adverse condition.

The wide fluctuations in the loss ratios for the entire period from 1914 to 1925 were due to the influence of the rapidly changing economic conditions and to the difficulties experienced by rate-making bodies in keeping abreast of the times and in adequately forecasting future conditions. One outstanding fact which may appear difficult to understand is that rates were at times increased where they should have been reduced and vice versa. This apparently paradoxical condition was brought about by the inability of the rate-making organization to keep pace with industrial changes. Rates for a given year must necessarily be predicated upon experience developed in preceding years. Delays in the maturing of this experience supplemented by further time consumed by the actuarial work involved may, in times of rapid economic and industrial changes, result in the establishment of rates which are not at all representative of the existing conditions.

WORKMEN'S COMPENSATION INSURANCE 157

When the permissible expense ratio is added to the developed ratio, the total should equal 100% if the estimated conditions are realized. As shown in Table 13 the difference between 100% and the sum of the loss and expense ratios given has varied widely in each policy year. For the policies written in 1914 the rates were, as a rule, more than adequate. The next two policy years resulted in losses, as far as stock companies were concerned. Then came the period of rapid wage-rate increases, and the mounting payrolls resulted in large profits for the stock companies and the mutual carriers which were able to return large sums to their policy holders. This situation continued until the business depression which followed 1920. Since that time the stock companies have operated under adverse conditions. For the period as a whole, up to and including the policy year 1924, a balance appears to be indicated in the table. In view of the fact, however, that the loss ratios of stock companies, as well as their expense ratios, were higher than shown in the table because of the inclusion of mutual company experience, the stock companies actually suffered a loss for the period as a

TABLE 13: TREND OF LOSS AND EXPENSE RATIOS OF STOCK AND MUTUAL COMPANIES COMBINED, NEW YORK STATE, POLICY YEARS 1914-1924

Policy Year	Premiums ¹ Earned	Developed Loss Ratio	Permissible Ex- pense Ratio	Total	Difference Between 100%	Loss or Gain
1914	\$12,549,915	52.6	33½	86.9	13.1	\$+1,644,039
1915	12,266,792	67.0	33½	100.3	-0.3	-36,800
1916	15,442,711	70.4	33½	103.7	-3.7	-571,380
1917	24,623,687	52.0	39 ²	91.0	9.0	+2,216,132
1918	30,451,808	56.5	41.9 ³	98.4	1.6	+487,229
1919	37,034,530	53.6	41.9	95.5	4.5	+1,666,555
1920	38,405,468	51.0	41.9	91.5 ⁴	8.5	+3,264,465
			and 39.0			
1921	31,712,770	59.6	39.0	98.6	1.4	+443,979
1922	36,883,794	66.2	39.0	105.2	-5.2	-1,917,957
1923	40,909,797	69.6	39.0	108.6	-8.6	-3,518,243
1924	41,772,546	68.1	39.0	107.1	-7.1	-2,965,851
Total	\$322,013,838	60.7	39.1	99.8	+0.2	\$+712,168

¹ Not including the state fund.

² Expense ratio increased to 39% on March 31, 1917.

³ 5% surcharge added from January 1, 1918 to June 30, 1920. Average for 1920 taken as 40.5%.

⁴ Estimated.

158 WORKMEN'S COMPENSATION IN NEW YORK

whole. What the development will be for policy years 1925 and 1926 is still doubtful; but in view of the lower loss ratio, indicated by the first reporting for the policies written in 1925, and of the 10% general increase in rates made on June 30, 1925, it may be expected that the experience will be more favorable than in 1924 and in the two years immediately preceding it.

Expenses and Expense Ratio

Quite apart from direct benefits to injured employees and medical and surgical costs, the operation of the workmen's compensation law involves considerable other expense for the insurance carriers. In New York State the cost of administering the law by the state authorities is borne by employers and is either provided for in the compensation insurance rates or collected by direct assessment on self-insurers. During the fiscal year ended June 30, 1926, the total cost for this item was \$1,107,573 or 4.2% of the total payments of direct benefits paid to beneficiaries during the year, or if the share of the insurance carriers is considered, it amounted to about 1.8% of the earned premiums. This, however, is only a small portion of the total expenses of the insurance carriers in their work of distributing the burden placed on employers by the compensation law and in acting as custodians of the benefit funds. The more costly elements include the expense of securing business (known as the acquisition cost), the expense of investigation and adjustment of claims, general administration, inspection and bureau expense, as for central rate-making organizations, and taxes. The state fund is not subject to this last item. Dividends paid to stockholders of stock companies are not included in the expenses as reported to the Insurance Department.

The actual amount of expense incurred varies considerably between the three types of carriers represented in New York State by the stock and mutual companies and the state insurance fund. The portion of the insurance rates which has been included in the expense items of the various insurance carriers is based on the larger requirements of stock companies. These are due principally to the higher cost of

obtaining business under the agency system, although for other items of expense differences in relative costs also exist. This is shown in Table 14, which indicates the proportion of the various items of expense for the calendar year 1925, based on the percentage that each bears to the total amount of earned premiums. The data are obtained from the country-wide experience of the insurance carriers which operate in New York State; but as most of the mutual companies and the state fund confine their activity to New York alone, the data shown for these carriers may be considered as local experience. The ratio of the expenses incurred by stock companies to the premiums is given as 41.6%, as compared with 22.1% for mutual companies and 18.2% for the state fund. In the lower half of the table the state fund is put on the same basis as other carriers. Since the rates charged by the state fund are at present reduced to 15% below those of other carriers, the expense ratio is based on a smaller amount of earned premiums. This difference must be adjusted to make the expense ratio of the state fund comparable with the others. When this is done, the ratio is reduced to 15.5%.

The cost of acquisition and field supervision of stock companies was 13.5% and 15.8% greater than that of mutual companies and the state fund respectively. The expense of investigation and adjustment of claims was also relatively higher for stock companies, being 1.7% greater than that for mutuals, and over twice as high as that for the state fund. In general administration costs, stock companies also held first rank, closely followed by the state fund, while the mutual company ratio was as much below the state fund cost as the stock company cost was above it.

The inspection and bureau expense is an item of relatively little importance, the ratios ranging from 3.2% for the mutuals to 2.2% for the state fund. In the matter of direct taxes which are a subject of continuing interest to employers, it may be said that the New York rate is lower than that of any other state with the exception of Maryland, which uses the same rate. As this item is based on the earned premiums, the mutual companies have an advantage in that the portions returned to policy holders are not taxed. In New York the state tax amounts to 1%. In other states the average is

TABLE 14: ANALYSIS OF EXPENSES FOR INSURANCE CARRIERS IN NEW YORK STATE, CALENDAR YEAR 1925¹

Insurance Carrier	Premiums Earned	Expenses Incurred	Expense Ratio	Analysis of Expenses Percentage of Earned Premiums				
				Investigation and Adjustment	Acquisition and Field Supervision	General Administration	Inspection and Bureau	Taxes
Stock Companies	\$122,507,848	\$50,968,941	41.6%	9.2%	17.7%	9.1%	2.9%	2.7%
Mutual Companies	29,229,083	6,468,595	22.1	7.5	4.2	5.6	3.2	1.6
State Insurance Fund	4,325,916	786,829	18.2	4.8	2.2	8.6	2.6	0
All Carriers	\$156,062,847	\$58,224,365	37.3%	8.8%	14.8%	8.4%	2.6%	2.4%

ANALYSIS OF EXPENSES, ALLOWING FOR 15% INITIAL DIFFERENCE IN STATE FUND RATES, CALENDAR YEAR 1925

Insurance Carrier	Premiums Earned	Expenses Incurred	Expense Ratio	Analysis of Expenses Percentage of Earned Premiums				
				Investigation and Adjustment	Acquisition and Field Supervision	General Administration	Inspection and Bureau	Taxes
Stock Companies	\$122,507,848	\$50,968,941	41.6%	9.2%	17.7%	9.1%	2.9%	2.7%
Mutual Companies	29,229,083	6,468,595	22.1	7.5	4.2	5.6	3.2	1.6
State Insurance Fund	5,089,313	786,829	15.5	4.1	1.9	7.3	2.2	0
All Carriers	\$156,826,244	\$58,224,365	37.1%	8.7%	14.7%	8.4%	2.9%	2.4%

¹New York State, Superintendent of Insurance, 67th Annual Report, 1926, Table IX, Part 2.

WORKMEN'S COMPENSATION INSURANCE 161

about 2%, with maximum amounts of 3½% in Virginia and 4% in Tennessee. The 1.8% which is estimated as covering the cost of administration is usually regarded as direct tax, although the cost is charged to general administration rather than included in the taxes as shown in the table. However, if this item is added to the total, the tax amounts to 2.8%, making the tax cost in New York higher than in all but five out of the thirty-six states considered in the table. Based on the country-wide experience, stock companies expended during 1925, 2.7% of their earned premiums for taxes, as compared with 1.6% spent on the same item by the mutuals. While the state insurance fund is not subject to taxation, it is required to contribute its pro rata share of the cost of administration of the compensation law to the same degree as private companies. These variations in the several items of expense account in a large measure for the differences in the cost of insurance which exist between the three types of carriers.

Not only has the proportion of the rate included for expenses increased, but, as the general rate level has risen, larger amounts have been collected for that item. For example, let us assume a rate of \$1.00 per \$100 of payroll for a particular classification in 1914. In the division of the rate, 33½ cents was considered sufficient for expenses. As the general rate level has increased nearly 50% since 1914, the \$1.00 rate of 1914 would have increased to approximately \$1.50 at the present time. With the 40% expense loading now used, 60 cents would be included for expenses, and the remaining 90 cents would be considered sufficient for losses. Thus, while the general rate level increased 50% from 1914 to 1926 or, to use the rate in the example, from \$1.00 to \$1.50, the amount of expense rose from 33½ cents to 60 cents or 80%, while the amount estimated to cover losses increased from 66½ cents to 90 cents, or 35%. No indication of the increase in the relative cost of compensation can be deduced from these figures, since rates are calculated on a fluctuating base—that of payrolls, and the effect of increasing payrolls has been to reduce the rates. This would have actually occurred if other factors, such as increased benefit amendments, had not offset this influence. The purpose of

162 WORKMEN'S COMPENSATION IN NEW YORK

the above example is to show the changes in the relative proportions of elements making up the rate as between the years 1914 and 1926. Inasmuch as the portion of the rate allowed for expenses is always a fixed percentage of the portion allowed for losses, the expense loading also increases when rates are increased on account of adverse experience or amendments to the law. For example, let us assume a rate of \$3.00 and that the \$1.80 allowed for losses is insufficient by 10%. As a result of this 10% increase, the new rate is \$3.30, since the loss portion of the rate is 60% of the whole under the present division of the rate on a 40-60 basis. Thus, an increase of 18 cents in this part of the rate, increases the portion for expenses by 12 cents, making a total rate increase of 30 cents.

The necessity of increasing both parts of the rate in the same proportion is a question which might be open to argument. This would apply particularly to stock companies, since in the case of the other carriers any excess of premiums collected over the necessary requirements of the business is returned to policy holders and any inequity is automatically adjusted. An examination of the several cost items shows that the cost of the acquisition of business and of taxes varies directly with the earned premiums and, therefore, with the rates. From this point of view it is proper that these expense items should be increased as the rate increases and vice versa. Whether or not commissions to agents should be based on a fixed percentage of the premiums need not be answered here, but as long as this system is in vogue it is necessary to provide for this item as a direct proportion of the rate. This item, together with taxes, makes up nearly 50% of the entire indirect expense of stock companies. Whether or not the other elements of the expense cost change with the loss cost depends largely on the reason for the change. If the rates are increased owing to the shortening of the waiting period from two to one week, it is evident that the greater number of cases involved must necessarily increase the cost of claim investigation and adjustment. If the weekly maximum rate for certain types of injury is increased from \$20 to \$25, there is no added cost for this item. In fact it is to the advantage of the insurance carrier in that

the larger sums, set aside for the cases in which payments are made over a considerable period of time, permit a greater interest return, or banking profit.

Undoubtedly these and similar conditions are considered by the Insurance Department as each increase in rates is made effective. There have been, however, other considerations. It has been felt that the portion of the rate included for expenses, while sufficient for the lower requirements of the mutual companies and of the state fund, has not been adequate to cover the expenses of stock companies. This is borne out by the actual experience of stock companies, as shown in Table 15. The country-wide experience of these companies shows that, for the entire period since 1914, the expense ratio has been 40.4%. For the same period the New York rates have provided for about 1.3% less than this amount. However, in making any comparison of expense in New York State with the country as a whole, it should be remembered that, while the New York experience makes up a considerable part of the total, certain items of expense in New York are more costly than in many other states. Under the New York system of holding a hearing in every case the cost of claim adjustment is higher than in other states, and the cost of state administration of the compensation act which is reflected in the expense of insurance carriers is also much greater.

The variation in the expense ratio from year to year for the three types of carriers is a matter of considerable importance. The stock companies incurred expenses of nearly 40% of the earned premiums during the first three years, as compared with 33½% provided for in the rates. It was on the basis of this experience, as well as of an indicated increase due to abnormal war-time conditions, that the 5% surcharge was added on January 1, 1918. As a result of the increase in payrolls which occurred during and after the war, the expense ratios actually decreased as compared with the pre-war period, but an upward trend is noted from 1918 to 1922 when the ratios steadily increased from 35% to 44%. Since that time expenses have been close to 42% of the earned premiums. In view of this experience, the rate-making bodies recently requested an increase in the

164 WORKMEN'S COMPENSATION IN NEW YORK

TABLE 15: EXPENSES AND EXPENSE RATIOS OF INSURANCE CARRIERS IN NEW YORK STATE, 1914-1925¹

Expenses

Calendar Year	Stock Companies	Mutual Companies	State Insurance Fund	Total
1914 ⁶				
1916.....	\$10,881,818	\$910,210	\$463,700	\$12,255,728
1917.....	5,950,789	621,611	302,797	6,875,197
1918.....	8,364,262	915,228	246,640	9,526,130
1919.....	9,715,056	1,121,177	388,609	11,224,942
1920.....	11,452,242	1,916,050	385,666	13,753,958
1921.....	11,494,291	2,297,338	372,313	14,163,942
1922.....	10,898,534	2,106,559	387,203	13,392,296
1923.....	12,062,876	2,394,719	539,613	14,997,199
1924.....	13,187,794	2,540,361	681,743	16,409,898
1925.....	14,547,215	2,704,575	786,829	18,038,619
Totals.....	\$108,554,868	\$17,527,828	\$4,555,113	\$130,637,809

Expense Ratio

Calendar Year	Ratio Included in Rates	Stock Companies	Mutual Companies	State Insurance Fund	Total
	%	%	%	%	%
1914 ⁶					
1916.....	33½	39.47	23.79	11.93	34.81
1917.....	39.0 ²	37.62	22.23	11.10	32.21
1918.....	41.9 ³	35.24	19.98	7.22	30.02
1919.....	41.9	37.86	18.91	11.34	32.09
1920.....	41.9 and 39	38.92	19.98	10.79	32.29
1921.....	39.0	42.33	26.34	12.00	36.34
1922.....	39.0	44.18	26.73	15.51	38.22
1923.....	39.0	41.94	23.52	17.59	35.70
1924.....	39.0	42.16	22.40	18.33	35.41
1925.....	40.0 ⁴	41.60	22.13	18.19	35.02
Totals.....	39.1% ⁵	40.36%	22.74%	13.50%	34.40%

¹ Annual Reports of the Superintendent of Insurance in New York State.

² Increased to 39% March 31, 1917.

³ 5% surcharge added from January 1, 1918 to June 30, 1920.

⁴ Increased to 40% January 1, 1925. ⁵ Weighted average. ⁶ Six months.

expense allowance to 41.8%, but the Superintendent of Insurance refused to increase the amount beyond 40% on the grounds that any addition would tend further to increase the cost of compensation and that adherence to the 40% ratio would develop economy on the part of the carriers.

The expenses of mutual companies have been relatively much smaller than those of stock companies, the ratio to premiums being 22.7%, as compared with 40.4% for stock

companies, for the period as a whole. The general trend has been similar to the stock company experience, with a high point of nearly 27% in 1922 and a subsequent steady decrease to 22% in 1925. During the same period the expense ratio of the state fund was rising steadily, bringing the expense cost closer to that of the mutuals. During the early years, the expense ratio of the state fund fluctuated from 7.2% to 15%, the average being about 11%. Starting in 1920 at 10.8%, the ratio increased to 18.2% in 1925, with an average since 1914 of 13.5%. As already explained, the expenses of the state fund are based on a relatively smaller volume of premiums than that for other carriers, since the initial rates charged by the state fund are below those of other carriers. Allowing for this difference, the relative expense ratio for 1925 would be 15.5% instead of 18.2%, and 11.6% for the entire period instead of 13.5%. For all carriers combined, the total amount of expenses incurred from 1914 to 1925 inclusive has been over \$130,000,000 or more than one-third of the premiums collected.

Reserves

The extent to which payments of compensation to beneficiaries over periods of time require the setting up of reserves is probably not generally realized. In death cases payments are made during the lifetime of the beneficiaries, except that payments to children cease at the age of eighteen and a lump sum is paid to a widow on remarriage. In cases of permanent total disability a pension is paid for life. A distinction must be made between total payments made to beneficiaries during any one year and payments made during any one year on account of injuries which occurred during that year. In the first case the payments include certain amounts for injuries which occurred in previous years, either because payments in particular cases for the year immediately preceding were not made in time for inclusion into the statement of that year's operations or because payments are being made periodically, as in death cases, which should correctly be charged to the year in which the accident occurred. It may be argued that these payments balance from year to year, and that payments made during any one year regardless of the year of accident

166 WORKMEN'S COMPENSATION IN NEW YORK

should approximate the actual cost of accidents during the year under consideration.

But even if the accident experience remains stable from year to year, the amounts paid out each year would have a pyramiding effect for a certain length of time. In an industry where injuries are of short duration this would, of course, not be true, since each injury would be completed within reasonable time; but where payments for injuries extend over a considerable period of time, a balance is not obtained until the number of cases completed each year equals the number of new cases added. For example, in an industry where an average of one accidental death occurs each year, the payments made for these death cases each year would gradually increase because they would be made in each succeeding year on a gradually increasing number of cases, until a balance would be more or less reached by the complete settlement of one case. There are factors, however, which make this balance difficult to attain, one being the increase in compensation benefits from year to year and another the various degrees of dependency in death cases. In permanent total disability cases the periodic payments might even extend longer than those made for the average death case with dependents. Payments for cases of permanent partial disability would have this same effect, although not to the same degree, as these payments are completed in a shorter time. The longest period for these cases in New York State is six years for the loss of an arm. Lump sum settlements in cases of this type of disability, however, dispose of the case immediately and are frequently used.

How the losses incurred by insurance carriers are distributed may be seen by reference to Table 16, which shows the experience of a large insurance company in New York State. It will be noted that roughly 40% of the losses incurred are paid during the year in which accidents occur, about 30%, on the average, during the next year, while the remainder is paid in diminishing amounts throughout the succeeding years. The reserve shown in the table refers to the amounts to be paid in future years.

Another large carrier estimates that its reserve of \$2,700,006, as of December 31, 1925, included over \$83,000 which

WORKMEN'S COMPENSATION INSURANCE 167

TABLE 16: RATIO OF PAYMENTS TO LOSSES INCURRED,
EXPERIENCE OF ONE CARRIER

Year of Payment	Years in Which Accidents Occurred				
	1921	1922	1923	1924	1925
1st Year.....	41.43%	37.66%	36.58%	40.74%	41.36%
2nd Year.....	30.73%	33.95%	26.84%	27.50%	..
3rd Year.....	7.88%	9.60%	7.83%	..	..
4th Year.....	4.03%	4.10%	..	..	..
5th Year.....	2.42%	..	..	..	..
Total.....	86.49%	85.31%	71.25%	68.24%	41.36%
Reserve.....	13.51%	14.69%	28.75%	31.76%	58.64%
Totals.....	100.00%	100.00%	100.00%	100.00%	100.00%

remained to be paid for accident cases covered by policies issued in 1914. During 1925 slightly more than \$9,000 was paid on these cases. This indicates the number of years that will pass before the payment of the entire reserve of \$83,000 is completed.

The amounts set aside by insurance companies as reserves for the payment of compensation over extended periods are estimated at the end of each policy year and at the end of each calendar year. These are recalculated annually, and corrections are made on the basis of cases completed during the year and of changed conditions in cases where payments still remain to be made, and continuing reports are made as of definite dates to the Superintendent of Insurance. Supervision over reserves is important for two reasons. The question of the adequacy of the amounts, set aside to meet the periodic payments of compensation and for medical expenses in cases which extend over a period of time, bears directly on the solvency of the insurance carrier. Also, the establishment of equitable rates would appear to demand that the estimated reserves should approximate the actual cost, since the incurred losses upon which the rates are based are estimated in so far as incompleting cases are included. Experience has shown, however, that the original estimates of reserves may vary considerably from those obtained after a number of years have elapsed and after the completion of a large majority of cases.

The Insurance Department exercises supervision over reserves through the reports which are made by the carriers

and by means of audits made by the department at the home offices of the carriers. The insurance law empowers the Superintendent of Insurance to require that the amount of reserves shall be adequate.

SUPERVISION OF STATE INSURANCE DEPARTMENT

In the field of compensation insurance the great majority of states require that rates shall be not only adequate, reasonable and non-discriminatory, but that the authorized rates shall be maintained. In other states no efforts are made toward regulation, and insurance companies are permitted to promulgate their own rates and alter them at will under the stress of competition. In some states the legislatures have encouraged free competition by passing anti-compact laws which forbid insurance companies to combine their experience for rate-making purposes.

Aside from the matter of rates, each state has developed laws which relate to insurance matters in general, such as the question of reserves and the amount of tax to be charged domestic companies and companies of other states. The requirements of the various states differ in many respects. While some progress has been made toward uniformity, great differences still exist. In this regard The National Convention of Insurance Commissioners, a voluntary organization of state insurance department officials, has been instrumental in securing co-operation between the states. This body interests itself in questions relating to insurance matters in general and in regulatory practices in particular. In order to exercise supervision in rate making, a permanent representative, who may be considered the public's representative in rating matters, has been located with the National Council on Compensation Insurance.

In insurance matters, New York is known as a closely regulated state. The Department of Insurance is essentially a supervisory organization created and operating under the provisions of the insurance law, a statute which applies in its particular provisions to all forms of insurance and to all insurance companies. From the point of view of employers the supervision of workmen's compensation insurance in-

volves essentially the maintenance of reasonable and non-discriminatory rates. Before proposed rates, as developed by the National Council on Compensation Insurance in cooperation with the Compensation Inspection Rating Board, are made effective, they must meet with the approval of the Superintendent of Insurance.

In the regulation of insurance carriers, the department is interested in securing the solvency of the various companies, as well as in the maintenance of approved rates and the observance of standard practices. The last two considerations, while corollaries to the first in many respects, are also of importance from the point of view of non-discrimination between risks.

The required reports, filed by all carriers with the Insurance Department, contain specific information in regard to their operations not only in New York State but also throughout the country. These are usually made annually, both by calendar and policy years, and cover all items required for an audit of the companies' operations and are supplementary to complete audits made at the home offices of the carriers by examiners from the Insurance Department. The state fund is required to file similar reports and is also subject to examinations. These reports and examinations are made not only with regard to the financial condition of the companies but also to determine the adequacy and reasonableness of rates. Aside from the operations of the current year, the Superintendent of Insurance is particularly interested in the sufficiency of reserves for amounts due beneficiaries which are to be paid over a period of time. If, in the judgment of the State Department, the solvency of any company is threatened, the Insurance Department is authorized to intervene. If provision can not be made for additional working funds, the business of the company is liquidated.

EXCLUSIVE STATE FUNDS VS. PRIVATE INSURANCE

The question of monopolistic state funds versus private insurance, as represented by stock companies and mutual organizations, has been repeatedly debated since the early days of workmen's compensation legislation. Organized

170 WORKMEN'S COMPENSATION IN NEW YORK

labor has gone on record as favoring a monopoly of the compensation insurance business by state-managed bureaus, while the private insurance interests have combatted every effort made to exclude them from participating in this field of insurance and have received support from those who do not favor state monopolies.

The arguments put forth for the establishment of monopolistic state funds are: (1) that since the liability imposed by compensation laws has been created through legislative action, the state should also provide the means of securing the payments of compensation to beneficiaries; (2) that a competitive insurance system unduly increases the cost of compensation insurance; (3) that profits should not be made in connection with any insurance system employed in the compensation field; (4) that the saving through the elimination of competition would permit the payment of larger benefits to employees; and (5) that state funds effect more prompt and more equitable settlements.

In reply to these arguments, the opponents of monopolistic state funds assert that there is no need of a monopoly, that the liability imposed on employers can be adequately cared for through private insurance, and that in the effort toward regulation the state should go no farther than the creation of a competitive insurance fund. It has been pointed out that in the case of failure of a private company the liability would either wholly or in part revert to the employer, and if he were unable to meet the obligation the purpose of the compensation law would be defeated. As a matter of fact there have been cases where employers have had to pay the compensation claims, but even in these instances the requirements of the state have been met. This shows that under private insurance there are certain safeguards for the protection of the employee. Stock companies can call upon their stockholders for additional working funds in case of need to the extent of their holdings, and it is only as a final measure that the policy holder assumes the liability. Under mutual insurance, the employer is at once subject to an assessment. The close regulation which exists in New York State is seen as a further safeguard to the solvency of private carriers. As far as the solvency of the state fund is concerned, it

should be mentioned that the compensation law definitely provides that policy holders of the fund shall be relieved of all liability incurred under the law and that employees shall have recourse only to the state fund.

The greater cost of a competitive system is evident, but great emphasis is placed on the value of competition in creating efficiency. It is also claimed by the advocates of private insurance that this factor is responsible for the great difference which is said to exist between competitive and monopolistic state funds. While the competitive fund may be subject to political influence and to the difficulties engendered through operating under civil service, competition with private carriers acts as a stimulus to carry on the business in accordance with business principles. In the case of a governmental monopoly, however, the point is made that the tendency is to carry on the work in a perfunctory manner, that the bureau tends to develop autocratic and arbitrary methods, that research and experimentation cease and that the accident prevention work and claim service are adversely affected.

The question of making profits from compensation insurance applies, of course, only to the stock companies, and even in these cases it is clear that any profit which may be made does not decrease the amount of compensation paid to employees. That the saving through the elimination of competition results in the payment of higher benefits to employees can hardly be sustained, because it can be shown that the laws of the exclusive state fund states are not as liberal as in many other states which do not have a monopoly of compensation insurance. An exception is made in the case of North Dakota, however, which has benefit schedules practically on a par with New York State, although it might be mentioned that the Workmen's Compensation Bureau of North Dakota has recommended a decrease in the death benefits. Ohio, because of its prominence as an industrial state, is frequently referred to in connection with its state fund. The claim is made that benefits in Ohio are about on a par with those of New York State. A brief examination of the benefit schedules of the compensation law shows that the New York State benefits are considerably higher, and a recent analysis shows that the benefits in Ohio on an index

172 WORKMEN'S COMPENSATION IN NEW YORK

number basis are 839 to 1000 for New York. To permit a comparison on the basis of experience, a detailed analysis was made elsewhere in this study,¹ and the results show that, if the Ohio compensation insurance rates were in effect in New York State, the premiums received would be insufficient by 44% to pay the losses incurred.

As to the claim that exclusive state funds provide more prompt and equitable settlements of compensation cases, the system, in effect in New York State, of requiring a hearing in every case assures without question the receipt by employees of all compensation due them under the law, while the close supervision given to claims by the State Department of Labor provides prompt settlement. Comparatively few cases are referred to the courts, although carriers are often forced to place protective appeals in cases where the legal time limit for settlement is insufficient for claim investigation. These are withdrawn immediately after the settlement of the case.

NEW YORK STATE INSURANCE FUND

The New York State Insurance Fund was created by a provision included in the original compensation law, which became effective in 1914. At the present time it is the second largest carrier operating in the state. Its activities are confined entirely to the workmen's compensation field in accordance with the purpose for which it was created, namely, to provide an alternative method of securing the payment of compensation benefits. The state fund's operations make possible, in some respects, a check on other carriers and provide a means of caring for those risks which are undesirable from the point of view of stock and mutual companies. Some 400 persons are employed by the state fund, the home office being located in New York City, with branches in the larger cities of the state. In its methods of operation the fund is somewhat similar to a mutual organization in that surplus funds are returned to policy holders as dividends.

In the matter of rates the state fund is in exactly the same position as other carriers, with the exception that, while

¹ See page 307.

private carriers must adhere to the rates set for each risk by the Compensation Inspection Rating Board, the fund has the privilege of quoting rates which are below those of private companies. At present, these rates are, in general, 15% lower. The experience of the state fund is combined with that of other carriers for rate-making purposes, and the same system of classifications is used as in the case of other carriers. Standardization in this matter, as well as in schedule and experience rating, is assured through the Rating Board's acting for all carriers.

It is not only in the reduction in the initial rates that special privileges are granted to the state fund. No taxes are paid, either local or federal. This item amounts on the average from 1.4% to 2.7% of the earned premiums, depending on whether the company is a stock or mutual carrier.

For dividend purposes the fund is permitted to arrange its policy holders in groups. The general group, which comprises the large portion of the business, is paid a flat rate of dividend in each case, while the special groups, which are composed either of individual concerns or of a group of similar concerns, are given special consideration according to the individual experience of each group. It is said that this arrangement was originally made for the purpose of securing business, and it has been admitted that there is a possibility of the special groups' receiving dividends at the expense of the general group. This system is difficult to justify, and it may be noted that, under the head of "Dividend Policy" in the Annual Report of the Industrial Commission, 1926, no mention is made of the special groups.

During the past six years the dividend rate in the general group has been 15%. This, together with the 15% initial reduction in rates, makes the total cost 27¾% lower than that of stock companies. It is rather difficult to compare the total cost between carriers as represented by the loss and expense ratios combined, since losses vary considerably according to the types of risk and the individual experience. Therefore, in making any comparison of mutual companies with the state fund, the question of the loss ratio can not be considered. That the state fund is not unduly burdened

174 WORKMEN'S COMPENSATION IN NEW YORK

because of being required to take all risks which apply for insurance is shown by the comparison of its loss ratios with those of the various carriers. The state fund points to the good quality of its business, and the records show that its loss ratio has been below that of stock companies. If all conditions are taken into account, it is very probable that the loss ratio of the state fund has not been much greater than that of mutual companies.

The state fund showed for the calendar year 1925 an expense ratio of 18.2% of the earned premiums, but when allowance is made for the initial reduction in rates and the expense ratio is put on the same basis as for other carriers, it is actually 15.5%, or 6.6% lower than that for mutual companies in general. Two small mutual companies in the same period showed expense ratios smaller than the state fund, but these are hardly comparable since there is a marked difference in the amount of the earned premiums. Based on their country-wide experience the expense ratio for four of the largest mutual companies operating in New York State ranged between 18.7% and 23.4%. One large mutual whose operations are confined principally to New York State and which is doing a business of more than half that of the state fund, recorded the lowest figure of these four. In comparing its ratio of 18.7% with that of 15.5% for the state fund, allowance must first be made for the 1% paid for taxes, making the real difference between the two carriers 2.2%. The table below gives the various elements which make up the expense ratio of the state fund and this particular mutual carrier.

Items of Expense	State Fund	Mutual Carrier
Investigation and adjustment of claims.....	4.1%	7.5%
Acquisition and field supervision.....	1.9	2.7
General administration.....	7.3	4.5
Inspection and bureau.....	2.2	3.0
	<u>15.5%</u>	<u>17.7%</u>

It will be noted that in every case except in the administration item the expense cost is higher for the mutual carrier. This cost is higher than the average of 5.6% for all mutual carriers, but somewhat lower than the 9.1% recorded for stock companies. As a matter of fact, there should not be

TABLE 17: SUMMARY OF BUSINESS OF THE STATE INSURANCE FUND, BETWEEN JUNE 30, 1914 AND DECEMBER 31, 1925¹

(Source: New York State, Industrial Commission, Annual Report, 1926)

Year	Policies in Force December 31	Premium in Force December 31	Premium		Losses Incurred		Expenses Incurred		Dividends Allowed	Total Surplus to Policy Holders ³
			Written	Earned	Amount	Ratio ⁴ Per Cent	Amount	Ratio ⁴ Per Cent		
1914 ²	7,125	\$689,765	\$689,765	\$645,154	\$393,572	60.9	\$82,447	13.0	..	\$250,162
1915.....	8,507	674,974	1,293,613	1,269,433	820,653	64.6	193,233	15.2	\$347,541	377,399
1916.....	9,966	797,743	2,048,129	2,045,926	1,890,229	92.4	188,020	9.2	240,085	253,179
1917.....	9,984	810,577	2,694,851	2,681,376	2,448,465	91.4	302,797	11.3	150,421	398,682
1918.....	8,782	940,903	3,332,842	3,282,965	1,660,472	50.5	246,640	7.5	229,956	1,052,469
1919.....	8,402	891,476	3,409,982	3,426,304	2,920,959	85.2	388,609	11.3	611,233	1,048,215
1920.....	9,305	1,023,927	3,798,305	3,573,047	2,562,374	71.7	385,665	10.8	367,279	1,422,186
1921.....	10,756	1,172,181	3,100,115	3,101,730	1,678,588	54.1	380,292	12.2	656,373	1,575,448
1922.....	11,401	1,194,233	2,632,125	2,496,233	1,677,540	67.2	395,574	15.8	534,438	1,844,024
1923.....	12,619	1,472,317	3,235,535	3,067,127	2,412,992	78.9	548,773	17.9	517,173	1,782,094
1924.....	13,886	1,897,715	3,883,725	3,719,832	2,953,735	79.5	691,845	18.6	580,181	1,979,325
1925.....	15,718	2,614,342	4,246,429	4,325,916	3,260,969	75.4	797,572	18.4	457,395	2,125,599

175

¹ In any comparison of these figures with those of private insurance companies it is necessary to keep in mind that state fund premiums are on a different rate basis, having been below those of private companies by 8½ per cent in 1914; by 20 per cent from January 1, 1915 to June 30, 1917; by 14¼ per cent from July 1, 1917 to June 30, 1920; and by 15 per cent since June 30, 1920.

² Six months.

³ Total surplus to policy holders includes surplus set aside for catastrophe, reserve for dividends, and surplus unassigned.

⁴ Loss and expense ratios are to earned premium.

176 WORKMEN'S COMPENSATION IN NEW YORK

any considerable difference between the expense of operation of the state fund and the large mutual companies. Outside of such items as taxes and the cost of legal matters to which the state fund is not subjected, the other items of cost should be approximately the same in both cases if the activities are carried on in the same manner.

During the past few years the state fund has shown an increasing participation in the compensation insurance business of the state, but is far from the position occupied prior to 1918. At the present time from $8\frac{1}{2}\%$ to 9% of the entire compensation business of the state is handled by the state fund. The summary of business for the several years since 1914 is shown in Table 17. In making any comparison of the state fund with other carriers, it should be remembered that its premiums are on a different basis, as the initial rates charged were below those of private carriers. The total admitted assets of the fund, as of December 31, 1925, were \$10,394,743. This compares with total liabilities of \$8,269,144, including \$6,505,646 for reserves for losses not as yet paid. The difference of \$2,125,599 between the assets and the stated liabilities, while actually a liability in itself, is designated as a surplus to policy holders. It includes \$250,000 set aside for dividends and \$850,000 to care for catastrophes.

CHAPTER V

EXPERIENCE IN OPERATION OF THE NEW YORK WORKMEN'S COMPENSATION LAW

A COMPREHENSIVE analysis of a workmen's compensation law can not rest with a theoretical study of statutory provisions or with an exposition of administrative and insurance procedure. Experience has repeatedly shown that anticipated conditions upon which a law has been predicated are not always realized in practice, and that it is necessary to ascertain what has been the actual experience in operation before a fair evaluation is possible. In assembling material which would show the experience with the operation of the workmen's compensation law in New York State, the Conference Board has endeavored to bring together the points of view of all interested groups. Workmen's compensation is seen in a different light by the employer, the wage earner, the casualty insurance company, the actuarial board and the State Department of Labor. Only the composite experience of all can present the subject in its true proportions.

Since it was particularly the province of the New York State Industrial Survey Commission to investigate the effect of existing legislation upon industry and the wage earner, the Conference Board made a special effort to obtain, from a large group of employers in all parts of the state, first-hand information concerning the operation of the workmen's compensation law, and to this end nearly 7000 questionnaires were sent out. Replies were received from 491 companies whose combined employment in 1925 averaged 202,183. The 1923 United States Census of Manufactures shows a total of 1,150,901 wage earners in New York State in that year. The monthly employment survey conducted by the New York State Department of Labor indicates that employment in 1925 averaged 11% lower than in 1923. On this basis the companies which reported to the Conference Board on workmen's compensation employ about 20% of the wage

178 WORKMEN'S COMPENSATION IN NEW YORK

erners in the state. To indicate how completely the state is represented, the cities or towns in which one or more of these reporting plants are located are listed in Table 18.

TABLE 18: CITIES AND TOWNS IN NEW YORK STATE REPRESENTED IN SUMMARY OF EXPERIENCE WITH WORKMEN'S COMPENSATION LAW

Acidalia	Hammondsport	North Tonawanda
Adams	Hemington	Norwich
Albany	Herkimer	Nunda
Amsterdam	Hilton	
Auburn	Holley	Ogdensburg
Averill Park	Homer	Olean
	Hoosick Falls	Oneida
Baldwinsville	Hornell	Oswego
Batavia	Horseheads	
Beacon		Palmyra
Binghamton	Ilion	Pen Yan
Brooklyn	Irvington	Phelps
Brownville	Ithaca	Phoenix
Buffalo		Port Chester
	Jamesstown	Potsdam
Canajoharie	Johnson City	Poughkeepsie
Canandaigua		Pulaski
Canastota	Kingston	
Carthage		Rochester
Cato	Lackawanna	Rome
Cattaraugus	Le Roy	
Cayuga	Lindenhurst	Schenectady
Cementon	Little Falls	Seneca Falls
Clifton Springs	Lockport	Silver Creek
Cobleskill	Lowville	Slaneateles Falls
Cohoes	Lyons Falls	Sparrow Bush
Corning		Springville
Cortland	McGraw	Syracuse
	Malone	
	Manlius	Thompson
Dolgeville	Marcellus Falls	Ticonderoga
Dover Plains	Maspeth	Tonawanda
Dunkirk	Medina	Troy
	Middletown	Tupper Lake
E. Aurora	Monroe	
E. Syracuse	Montour Falls	Union
Ellicottville	Morris	Utica
Elmira	Mottville	
Endicott	Mount Vernon	Walden
	Myers	Warsaw
Falconer		Waterford
Firchcliffe	Nassau	Watertown
Fort Plain	Newark	Watervliet
Frankfort	Newburgh	Waverly
Fulton	New Hartford	Wayland
	New York City	Webster
	New Woodstock	Wellsville
Geneva	Niagara Falls	Wilson
Glens Falls	North Hoosick	
Gloversville	Northport	Yonkers
Gouverneur		

The wage-earner's experience in the administration of the law was particularly desired, since it was for his relief that the law was enacted. In seeking this material, however, a difficult problem was presented because only a part of the labor of the state is represented in labor organizations, and the unorganized section has no official spokesmen. It was necessary, therefore, except in so far as employers could speak for their employees, to confine such an investigation to organized labor, and questionnaires were sent to labor headquarters in different sections of the state. Only one reply was received, and this was filled out so briefly as not to contain any information of value. Questionnaires were likewise sent to various associations which are in direct contact with wage earners and which would presumably be aware of any difficulties experienced by the wage earner in obtaining what he was entitled to by law. No replies were received from this group.

Since casualty insurance companies are necessarily in close touch with the administration of workmen's compensation, it was felt that their experience might throw much light upon conditions obtaining in New York. Accordingly, questionnaires were addressed to both stock and mutual companies doing business in New York State. A number of companies were most generous in placing at the disposal of the survey their New York State experience. Companies furnishing material to the Conference Board accounted for 63% of the premiums earned in New York State in 1925. Technical bodies, in particular the National Council on Compensation Insurance, also provided material of the greatest value for this study, and the records of the New York State Department of Labor have been used extensively.

This and the following chapter are based upon the voluminous material obtained from these several sources. The endeavor has been to take up the two subjects of administration and costs and to treat them from the divergent points of view of the interested groups in order that the subjects may be viewed in their entirety.

ACCIDENTS

Section 110 of the Workmen's Compensation Act provides that "Every employer shall keep a record of all injuries,

180 WORKMEN'S COMPENSATION IN NEW YORK

fatal or otherwise, received by his employees in the course of their employment. Within ten days after the occurrence of an accident resulting in personal injury a report thereof shall be made to the commissioner upon blanks to be procured from the commissioner for this purpose." The record of the accidents so reported, as tabulated by the Bureau of Statistics and Information of the New York State Department of Labor, is shown in Table 19 and Chart 3.

**TABLE 19: ACCIDENTS REPORTED IN NEW YORK STATE
BETWEEN JULY 1, 1914 AND JANUARY 31, 1927**

(Source: New York State Department of Labor)

Annually, between July 1, 1914 and June 30, 1921

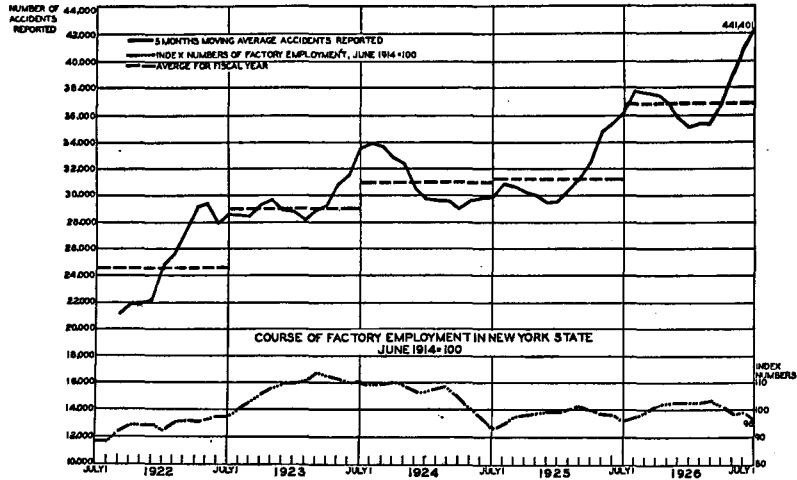
Fiscal Year	Total Accidents Reported	Monthly Average
1915.....	225,391	18,783
1916.....	276,386	23,032
1917.....	313,406	26,117
1918.....	286,871	23,906
1919.....	288,444	24,037
1920.....	345,672	28,806
1921.....	294,469	24,539

Monthly, between July 1, 1921 and January 31, 1927

Month	1921-22	1922-23	1923-24	1924-25	1925-26	1926-27
July.....	18,388	24,509	31,893	31,054	38,161	43,236
August.....	21,183	28,957	33,769	31,061	36,364	46,653
September.....	21,393	28,148	37,344	30,522	36,618	44,656
October.....	22,598	30,169	34,224	32,567	40,724	46,472
November.....	21,995	30,322	30,774	27,538	35,827	43,380
December.....	22,480	28,842	27,494	29,488	36,854	43,323
January.....	20,050	30,356	31,589	29,952	34,173	39,838
February.....	23,742	24,165	28,048	27,344	30,961	..
March.....	35,854	29,885	30,175	33,129	37,392	..
April.....	25,259	27,422	30,129	32,156	36,745	..
May.....	30,568	32,237	27,709	33,390	36,609	..
June.....	30,334	31,833	28,560	36,011	40,973	..
Total.....	293,844	346,845	371,708	374,212	441,401	..

Accident statistics present one of the most difficult problems in an analysis of the workmen's compensation situation. A mere computation of the number of reported accidents may give some indication of the absolute number of industrial casualties, but in the absence of a common exposure base it offers no means of comparing conditions in different periods. The fact that reported accidents increased between

CHART 3: EMPLOYMENT AND ACCIDENTS IN NEW YORK STATE, FISCAL YEARS 1921-22 TO 1925-26



182 WORKMEN'S COMPENSATION IN NEW YORK

two periods is inconclusive, unless the relative exposure is also known. Consequently, the figures for reported accidents are not a satisfactory index of accident experience, but they provide the most complete listing of accidents available at the present time. The State Department of Labor is fully aware of their inadequacy and is endeavoring to improve the method of reporting.

These figures have been plotted on Chart 3 in order to show the trend more clearly and also to reveal seasonal fluctuations and other characteristics. During the fiscal year ended June 30, 1915, the first year in which the compensation law was operative, the accidents reported averaged nearly 19,000 per month. In each of the next two years large increases occurred, bringing the monthly average to 26,000 in 1917. The average per month during the five years from 1918 to 1922, with the single exception of the year 1920, was practically at a level of 24,000. The year 1923 showed another increase in accidents to approximately 29,000 per month. For 1924 and 1925 the figures were practically at a level of 31,000 per month. The largest gain for any single year since 1915 occurred in the fiscal year 1926, when the monthly average of 36,800 accidents, or roughly 1500 per working day, was recorded.

There are two elements which control the trend of reported accidents: the frequency of the occurrence of accidents and the completeness of reporting by employers. Accident frequency is measured by the number of accidents occurring in relation to a common base, which is usually exposure, or the total number of man-hours worked. It is natural to expect accidents to increase or decline with industrial activity. Undoubtedly, the increase in accidents reported in 1916 and 1917 reflected to a considerable extent the influence of the rising employment which occurred during the early years of the World War. With more workers exposed to the hazards of industry, accidents were certain to increase in number. Moreover, in a period when thousands of men and women were being introduced to new types of work, and when production was being pushed to the limit, it was to be expected that accidents would increase even beyond the point indicated by the greater employment. The drop in the

accidents during the year ended June 30, 1919, the increase in 1920 and the decrease in 1921, correspond to the general course of business activity in these periods.

The factories of New York State account for more than 40% of the compensable cases recorded in the state and are responsible for a large number of the less severe accidents as well, so that the reported accident totals, which include all types of employment in the state, would be greatly influenced by the accident frequency in manufacturing industries. As may be seen from Chart 3, there is some correlation between the trend of factory employment and the accidents reported, although after the high point of employment in March, 1923, the accidents continued to increase while employment decreased.

The importance of the completeness of reporting of accidents, as a factor in determining the trend of reported accidents, should not be overlooked. While the law specifies that "all injuries" received in the course of employment shall be reported, it is difficult to believe that this provision has been observed to the letter. The tendency, however, has undoubtedly been toward an increasing thoroughness in the reporting of accidents as employers have become familiarized with the procedure, and in view of the shortened waiting period which has made compensable a large group of temporary disability cases which were not compensable before January 1, 1925. As a result employers are reporting accidents more fully at the present time than during the early years of the compensation law. Consequently, the more recent figures for reported accidents probably indicate an increase in accidents greater than has actually taken place.

The reported accidents, classified by administrative districts for the five-year period, 1922-1926, are shown in Table 20. The New York City district accounted for nearly 60% of the accidents over the five-year period but showed the smallest increase—40.5%—between 1922 and 1926. The remaining 40% of the reported accidents was distributed evenly among the four other districts, but these districts showed a widely differing percentage increase, ranging from 52.2% for Rochester to 101.2% for Syracuse. The average for the state as a whole was 50.2%.

TABLE 20: ACCIDENTS REPORTED, BY ADMINISTRATIVE DISTRICTS, BETWEEN JULY 1, 1921 AND JUNE 30, 1926

(Source: New York State Department of Labor)

Administrative District	1921-22		1922-23		1923-24		1924-25		1925-26		Per Cent Increase 1926 Over 1922
	Actual Number	Per Cent of Total	Actual Number	Per Cent of Total	Actual Number	Per Cent of Total	Actual Number	Per Cent of Total	Actual Number	Per Cent of Total	
New York City	187,737	63.9	199,859	57.6	214,806	57.8	220,182	58.8	263,813	59.8	40.5
Albany	28,560	9.7	36,970	10.7	37,075	10.0	37,300	10.0	45,693	10.3	60.0
Syracuse	23,996	8.2	38,847	11.2	46,588	12.5	43,030	11.5	48,277	10.9	101.2
Rochester	22,519	7.6	27,471	7.9	30,329	8.2	29,937	8.0	34,268	7.8	52.2
Buffalo	31,032	10.6	43,698	12.6	42,910	11.5	43,763	11.7	49,350	11.2	59.0
Total	293,844	100.0	346,845	100.0	371,708	100.0	374,212	100.0	441,401	100.0	50.2

Accident experience is provided from another point of view by figures compiled by the National Council on Compensation Insurance which show the accident frequency per \$1,000,000 of actual payroll for the six-year period from 1918 to 1923. While not as desirable for measuring exposure as man-hours, the payroll basis of comparison is better than none. These figures have the advantage of classification into the five main disability groups as well as that of showing a composite total. These data are based upon the number of cases actually reported in Schedule Z, except that the number of temporary total disability cases for each year has been adjusted to give effect to the amendment to the law of January 1, 1925, which changed the waiting period from two weeks to one week, thus increasing the number of compensable temporary disabilities.

The upper section of Table 21 shows the accident frequency on the basis of actual payroll and is consequently influenced by fluctuations in wage levels. For this reason the lower section more accurately reflects accident frequency, since payrolls have

TABLE 21: ACCIDENT FREQUENCY PER \$1,000,000 OF PAYROLL IN NEW YORK STATE, JANUARY 1, 1918 TO DECEMBER 31, 1923¹

(Source: National Council on Compensation Insurance)

Policy Year	Kind of Injury					
	Death	Permanent Total	Major Permanent Partial	Minor Permanent Partial	Temporary Total	All
Actual Payrolls						
1918	.33	.04	.74	2.03	30.69	33.83
1919	.24	.02	.52	2.06	25.11	27.95
1920	.19	.02	.39	1.94	17.80	20.34
1921	.22	.02	.39	1.90	19.76	22.29
1922	.25	.01	2.44	2.44	22.54	25.71
1923	.26	.02	.47	2.74	21.47	24.96
Payrolls Adjusted to a Common Wage Level						
1918	.22	.03	.49	1.35	20.45	22.54
1919	.19	.02	.40	1.58	19.33	21.52
1920	.17	.02	.34	1.69	15.55	17.77
1921	.19	.01	.33	1.61	16.73	18.87
1922	.21	.01	.40	2.07	19.17	21.86
1923	.25	.02	.44	2.61	20.39	23.71

¹ Based upon the number of cases actually reported in Schedule Z, except that the number of temporary total cases for each year has been adjusted to give effect to the law amendment of January 1, 1925, which changed the waiting period from two weeks to one week, and consequently increased the number of compensable temporary disabilities.

been adjusted to bring each year to a single common wage level. The figures in this table indicate that there was comparatively little change in accident frequency between 1918 and 1923, and that in the case of permanent total and major permanent partial disabilities the frequency actually declined. For all types of disability combined, the accident frequency per \$1,000,000 of payroll increased from 22.54 in 1918 to 23.71 in 1923.

CASES INDEXED FOR HEARINGS BY REFEREES

When the Bureau of Workmen's Compensation of the New York State Department of Labor receives a report of injury, as required by Section 110 of the workmen's compensation law, an examination is made to determine so far as possible whether or not the case involves the payment of compensation. If, in the judgment of the "examiner", it is

186 WORKMEN'S COMPENSATION IN NEW YORK

probable that the case is compensable, it is indexed and put on a calendar for a hearing before a referee. Claims for compensation are indexed in the same manner and are included in the data given below.

During the four years ended June 30, 1926, the number of these cases has increased 130%. For the year ended June 30, 1922, 67,945 cases were indexed. In 1926 this number increased to over 156,500, as shown in Table 22. In the early part of the fiscal year 1921-22 the cases averaged in the neighborhood of 5,000 per month, while in the year ended June 30, 1926, the monthly average was over 13,000.

TABLE 22: COMPENSATION CASES INDEXED FOR HEARING BEFORE REFEREES IN NEW YORK STATE, JULY 1, 1921 TO JANUARY 31, 1927

(Source: New York State Department of Labor)

	1921-22	1922-23	1923-24	1924-25	1925-26	1926-27
July.....	3,918	6,683	8,869	8,265	13,637	15,797
August.....	4,094	5,508	10,162	8,292	13,129	15,867
September.....	5,337	9,649	10,993	8,582	12,852	14,977
October.....	5,446	8,044	11,422	8,768	13,930	14,918
November.....	5,494	8,062	10,473	7,919	12,524	15,088
December.....	5,800	7,525	8,695	8,516	13,007	14,674
January.....	6,682	10,089	9,602	10,821	12,410	14,249
February.....	5,529	7,767	9,102	11,059	11,391	..
March.....	6,648	8,114	9,794	12,093	14,069	..
April.....	5,775	8,227	9,221	12,239	12,560	..
May.....	5,853	9,380	8,565	15,663	12,612	..
June.....	7,369	9,659	8,969	12,641	14,420	..
Total.....	67,945	98,707	115,867	124,858	156,541	..

The number of cases for each month of the five-year period ended June 30, 1926 is shown on Chart 4. As may be noted, there was a steady increase up to the end of 1923. During 1924, a downward tendency is observed. On January 1, 1925, the waiting period was reduced from two weeks to one. This change in the law undoubtedly caused the large increase in cases indexed for hearing during 1925.

Table 23 gives the cases indexed by districts. While the proportions of each district to the state total are shown, the figures are not particularly significant, since they depend entirely upon the judgment used by the examiners in each district. This undoubtedly varies somewhat from year to

CHART 4: CASES INDEXED FOR HEARING BEFORE REFEREES IN NEW YORK STATE

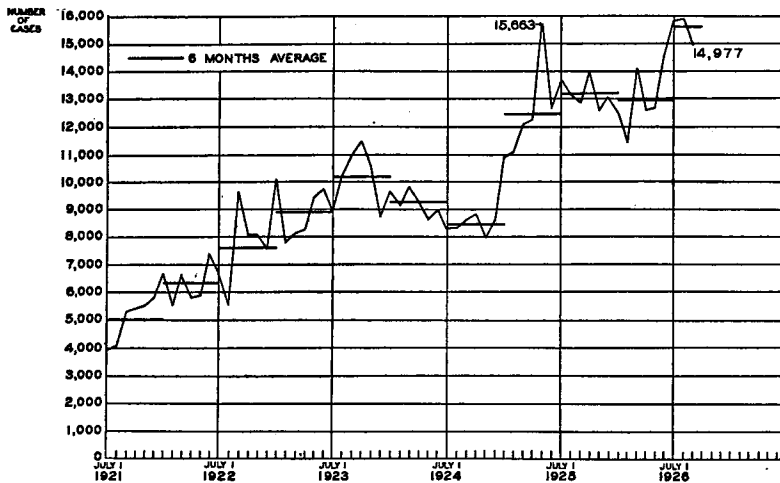


TABLE 23: CASES INDEXED FOR HEARING IN NEW YORK STATE, BY DISTRICTS, BETWEEN JULY 1, 1921 AND JUNE 30, 1926

District	1921-22	Per Cent	1922-23	Per Cent	1923-24	Per Cent	1924-25	Per Cent	1925-26	Per Cent	Per Cent 1921-1926
New York	37,149	54.59	55,237	55.96	62,597	54.02	75,117	60.16	93,412	59.67	151,445
Albany	8,872	13.04	11,028	11.17	11,041	9.53	11,852	9.48	14,756	9.43	66,32
Syracuse	7,252	10.64	11,001	11.15	12,396	10.70	14,139	11.32	16,554	10.57	128,58
Rochester	6,149	9.04	8,341	8.45	8,114	7.00	8,905	7.13	10,693	6.83	73,50
Buffalo	8,653	12.49	13,100	13.27	21,719	18.74	14,865	11.91	21,126	13.30	144,71
Total	68,045	100.00	98,707	100.00	115,867	100.00	124,858	100.00	156,541	100.00	130,06

¹ The slight discrepancy between the totals for 1922 in Tables 22 and 23 is unaccounted for, but is so small as to be immaterial.

year and depends also upon the policy in effect during each period as regards cases to be indexed.

HEARINGS HELD BY REFEREES

The extent of the work necessary for the adjudication of claims arising under the workmen's compensation law is perhaps best shown by the large number of hearings held by referees on cases which come before them for settlement. During the fiscal year 1926, there were approximately 370,000 hearings held, as compared with 102,500 in 1922. This represents an increase of over 260% for the four-year period. Table 24 gives the monthly data for the state as a whole and also shows the yearly total for each of the five districts into which the state is divided.

Included with the number of hearings held in any one-year period are hearings on cases which were incomplete at the close of the previous year, as well as those held on cases not yet reached before the commencement of the new fiscal year. Hearings for reopened cases are also included, but these are comparatively few in number. Thus hearings held by referees in a given year are not confined to cases arising from

TABLE 24: HEARINGS HELD, CASES CLOSED AND NUMBER OF HEARINGS PER CASE CLOSED IN NEW YORK STATE, JULY 1, 1922 TO JUNE 30, 1926

(Source: New York State Department of Labor)

Administrative District	1921-22	Per Cent	1922-23	Per Cent	1923-24	Per Cent	1924-25	Per Cent	1925-26	Per Cent	Per Cent Increase 1922-1926
Hearings Held by Referees											
New York.....	61,934	60.4	93,570	61.6	158,684	62.0	186,083	65.2	231,647	62.6	274.0
Albany.....	13,107	12.8	15,093	9.9	24,959	9.7	25,905	9.1	32,723	8.9	150.0
Syracuse.....	8,500	8.3	14,749	9.7	18,915	7.4	19,612	6.9	35,142	9.5	313.0
Rochester.....	9,810	9.6	13,379	8.8	21,734	8.5	21,282	7.5	25,511	6.9	160.0
Buffalo.....	9,196	8.9	15,183	10.0	31,738	12.4	32,423	11.3	44,863	12.1	388.0
Total.....	102,547	100.0	151,974	100.0	256,030	100.0	285,305	100.0	369,886	100.0	261.0
Cases Closed by Referees											
New York.....	33,373	54.7	39,836	51.1	66,520	59.9	72,101	61.9	97,473	58.4	192.0
Albany.....	8,514	14.0	10,572	13.5	11,480	10.4	12,324	10.6	16,403	9.8	93.0
Syracuse.....	6,349	10.4	10,016	12.9	10,574	9.5	8,912	7.6	21,729	13.0	242.0
Rochester.....	5,831	9.5	7,511	9.6	8,819	7.9	8,732	7.5	10,749	6.4	84.0
Buffalo.....	6,973	11.4	10,004	12.8	13,622	12.3	14,473	12.4	20,706	12.4	197.0
Total.....	61,040	100.0	77,939	100.0	111,015	100.0	116,542	100.0	167,060	100.0	174.0
Number of Hearings Per Case Closed											
	1921-22		1922-23		1923-24		1924-25		1925-26		Per Cent Increase 1922-1926
New York.....	1.9		2.4		2.4		2.6		2.4		28.0
Albany.....	1.5		1.4		2.2		2.1		2.0		29.2
Syracuse.....	1.3		1.5		1.8		2.2		1.6		20.9
Rochester.....	1.7		1.8		2.5		2.4		2.4		41.1
Buffalo.....	1.3		1.5		2.3		2.2		2.2		64.4
Total.....	1.7		2.0		2.3		2.5		2.2		31.6

190 WORKMEN'S COMPENSATION IN NEW YORK

injuries sustained in that year, and consequently the yearly figures should be interpreted as representing the degree of activity for the period rather than as cases resulting from accidents which occurred in a certain year.

The number of hearings increased considerably as a result of the amendment to the law, made effective January 1, 1925, which decreased the waiting period from two weeks to one. The effect of this amendment has been to make compensable a considerable number of injuries which are not sufficiently severe to be compensable under the two weeks waiting period. The full effect of this amendment is not reflected in the figures for 1924-25, since only the last six months of that fiscal year were affected by the amendment, and since lack of familiarity with the provisions of the amendment undoubtedly caused a lag in the reporting of short-time disabilities. Figures for 1925-26, however, show in their tremendous increase the effect of the amendment. Hearings held by referees rose from 285,305 in 1924-25 to 369,886 in 1925-26, an advance of nearly 30% in one year. As in the case of accidents reported, the New York City district accounts for approximately 60% of the hearings, indicating the volume of administrative routine concentrated in this comparatively small section of the state.

CASES CLOSED

A compensation case may be closed by the Industrial Board either by awarding compensation or by disallowing the claim. The closing of a case is not necessarily permanent, however, since at its discretion the Industrial Board may reopen it at any time. In Table 24, under the heading "Cases Closed by Referees," the number of cases closed includes both original and reopened claims, but the latter are relatively few in number. The tabulation has been made according to the year in which cases were settled without regard to the years in which the accidents occurred.

The increase in the number of cases closed between 1922 and 1926 amounted to 174% for the state as a whole. Three districts showed very large increases during this period, ranging from 192% for New York City to 242% for Syracuse.

There was also a rather steady advance in the number of hearings per case closed. In 1925-26, New York City and Rochester led with an average of 2.4 as against an average for the state of 2.2. Buffalo showed the greatest increase in number of hearings per case closed between 1922 and 1926 with 64.4%, as compared with 31.6% for the entire state.

The State Department of Labor does not make a regular practice of tabulating compensable and disallowed claims either for the entire state or by districts, but occasionally it makes a test tabulation to determine the proportion of claims disallowed to the total number of cases closed, with duplications omitted. Recently the ratio has been close to one case disallowed to every three cases closed, both in the New York City district and for the remainder of the state. This is shown on Table 25.

TABLE 25: TOTAL CASES CLOSED AND NUMBER OF CLAIMS DISALLOWED IN NEW YORK STATE, FISCAL YEAR 1925-26

(Source: New York State Department of Labor)

Month	Total Cases Closed			Total Disallowed Cases		
	New York City	Up-State	Total	New York City	Up-State	Total
July, 1925.....	3,314	3,601	6,915	986	1,141	2,127
August, ".....	4,669	3,512	8,181	1,371	1,023	2,394
September, ".....	5,947	4,860	10,807	2,012	1,650	3,662
October, ".....	9,277	5,957	15,234	3,177	1,743	4,920
November, ".....	6,894	5,178	12,072	2,254	1,689	3,943
December, ".....	8,454	6,273	14,727	2,976	2,072	5,048
January, 1926.....	7,292	5,601	12,893	2,467	1,968	4,435
February, ".....	6,114	4,686	10,800	1,999	1,690	3,689
March, ".....	8,839	5,646	14,485	2,892	1,852	4,744
April, ".....	8,641	5,603	14,244	3,063	1,784	4,847
May, ".....	7,339	4,899	12,238	2,439	1,682	4,121
June, ".....	7,464	3,746	11,210	2,713	1,606	4,319
Total for year.....	84,244	59,562	143,806	28,349	19,900	48,249

COMPENSABLE ACCIDENT CASES

In order fully to appreciate the provisions of the workmen's compensation law as regards monetary benefits to employees or their dependents and the cost to employers it is necessary to have some knowledge of the various types of compensated accident cases in relation to each other and to

192 WORKMEN'S COMPENSATION IN NEW YORK

the total of all cases. Table 26 shows the total number of compensable accidents by years of occurrence and also the distribution of cases closed during each of the last four fiscal years, according to the year in which accidents occurred. On Chart 5 these figures have been plotted in connection with the accidents reported during each year.

TABLE 26: TOTAL COMPENSATION CASES AND DATES OF CLOSING, NEW YORK STATE, JULY 1, 1914 TO JUNE 30, 1926

(Source: New York State Department of Labor)

Year in Which Accidents Occurred	Cases Tabulated by Year of Occurrence	Cases Closed				Total	Total Number of Compensated Accidents
		1922-23	1923-24	1924-25	1925-26		
1914-1915.....	39,622	5	1	..	..	39,628	39,628
1915-1916.....	47,474	25	3	..	1	47,506	47,506
1916-1917.....	55,441	36	9	5	1	55,492	55,492
1917-1918.....	47,151	51	16	14	4	47,236	47,236
1918-1919.....	45,495	97	49	25	10	45,676	45,676
1919-1920.....	51,213	323	100	83	31	51,750	51,750
1920-1921.....	44,982	1,155	352	214	85	46,788	46,788
1921-1922.....	47,878	19,077	1,595	424	174	69,148	69,148
1922-1923.....	..	37,309	27,398	1,572	430	66,709	67,000
1923-1924.....	..	..	43,460	24,394	1,742	69,596	70,400
1924-1925.....	..	..	..	49,482	30,352	79,834	82,000
1925-1926.....	..	..	..	..	66,843	66,843	100,000 ¹
Total.....	379,256	58,078	72,983	76,216	99,673	686,206	722,624

Percent of Cases Closed Each Year, July 1, 1920 to June 30, 1926

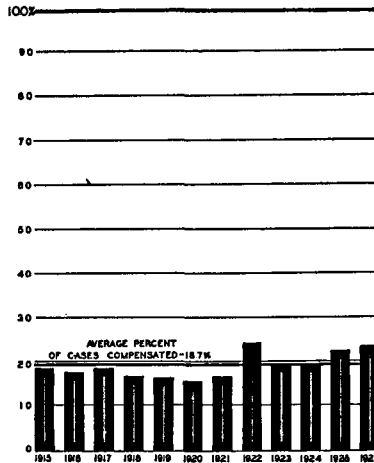
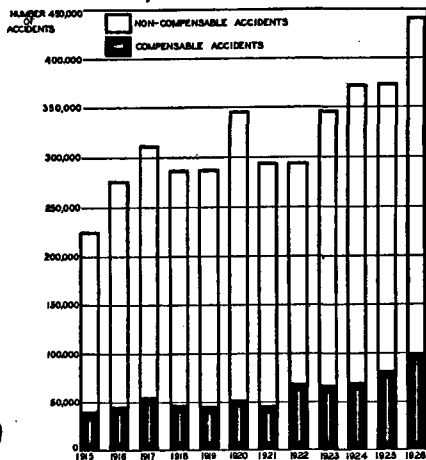
Year in Which Accidents Occurred	Years in Which Cases Were Closed			
	1922-23	1923-24	1924-25	1925-26
1920-1921.....	2.0	..	..	..
1921-1922.....	32.9	2.2	..	..
1922-1923.....	64.2	37.5	2.1	..
1923-1924.....	..	59.5	32.0	1.8
1924-1925.....	..	..	64.9	30.5
1925-1926.....	..	..	..	67.1
Total.....	99.1	99.2	99.0	99.4

¹ Estimated.

To obtain the total number of compensable accidents which occurred during the past four years it was necessary to make slight adjustments in three of those years to provide

CHART 5: ACCIDENTS REPORTED AND CASES COMPENSATED IN NEW YORK, 1915 TO 1926

14



CASES COMPENSATED ARE SHOWN AS OF THE YEAR IN WHICH ACCIDENTS OCCURRED

194 WORKMEN'S COMPENSATION IN NEW YORK

for accident cases which have not yet been closed. The total for the fiscal year 1925-26 is an estimate based on the experience of previous years. It takes into account the change in the waiting period from two weeks to one, made effective on January 1, 1925. There are certain slight duplications in the data given, on account of cases reopened and closed again during the year. In the fiscal year 1924-25 there were 753 of these cases.

The compensable accident cases arising prior to 1923 were tabulated by the Department of Labor according to the year of accident occurrence. This method resulted in the omission of a number of cases in each year which had not been closed at the time of the compilation. As the data were not published until March, 1926, the figures for the various years showed a growing incompleteness which became more and more pronounced in the later years. From 1923 on, the cases closed during any one year were used as the basis of tabulation, regardless of the year of accident incidence. In this way the untabulated cases for earlier years were included as they were closed.

The number of compensated cases increased from nearly 40,000 in the fiscal year 1914-15 to over 80,000 in the year ended June 30, 1925. The indications are that for the year 1925-26 the number will be even greater. As may be noted from Chart 5, the number of compensated cases has been steadily increasing during the last five years. The average number per year for the seven years, from 1914 to 1921 inclusive, was nearly 48,000. During the next four years the average was over 72,000, and if the fiscal year 1925-26 is included, the average for the last five years will be probably close to 78,000.

Table 26 shows also the per cent of cases closed each year during the last four fiscal years. Between 59% and 67% of the compensation cases were closed in the year in which the accident occurred; about 97% had been closed by the end of the year following the accident, and 99% by the close of the third year. It is natural that many cases can not be closed in the year in which they originate. Cases which arise near the end of the fiscal year can not be considered until the following year because of lack of time. Tardy reporting of

accidents may throw the cases into the next year, while long-time temporary and permanent disability cases may not be closed until considerable time has elapsed. Furthermore, controverted cases, appeals to the courts and reopening of cases, all tend to postpone the final closing of cases.

COMPARISON OF REPORTED ACCIDENTS AND COMPENSATION CASES

The proportion of reported accidents to compensated cases is shown in Table 27. Between 1915 and 1926 the per cent of compensated cases ranged from 14.97% in 1920 to 23.53% in 1922. There is no constant trend observable except in the last three years, during which period a fairly definite upward tendency may be noted. In making comparisons of cases compensated with accidents reported over a period of years, it should be borne in mind that the reporting of accidents has undoubtedly improved with succeeding years and that, other influences being equal, this has tended

TABLE 27: PROPORTION OF COMPENSATED CASES TO REPORTED ACCIDENTS IN NEW YORK STATE, JULY 1, 1914 TO JUNE 30, 1926¹

(Source: New York State Department of Labor)

Year	Accidents Reported	Cases Compensated	Per Cent of Cases Compensated to Accidents Reported
1914-1915.....	225,391	39,629	17.58%
1915-1916.....	276,386	47,506	17.19
1916-1917.....	313,406	55,492	17.71
1917-1918.....	286,871	47,236	16.47
1918-1919.....	288,444	45,676	15.84
1919-1920.....	345,672	51,750	14.97
1920-1921.....	294,469	46,788	15.89
1921-1922.....	293,844	69,148	23.53
1922-1923.....	346,845	67,000 ²	19.32
1923-1924.....	371,708	70,400 ²	18.94
1924-1925.....	374,212	82,000 ²	21.91
1925-1926.....	441,401	100,000 ²	22.70
Total.....	3,858,649	722,624	18.70

¹ The cases compensated as shown in this table are given opposite the years in which the accidents occurred.

² Slight corrections made as shown in Table 26 to provide for cases not yet closed.

³ Estimated.

196 WORKMEN'S COMPENSATION IN NEW YORK

to cause a reduction in the ratio. However, it is safe to assume that, in recent years, approximately one out of five of the reported accidents has become a compensated case.

EFFECT OF REDUCTION IN WAITING PERIOD ON THE NUMBER OF COMPENSATED CASES

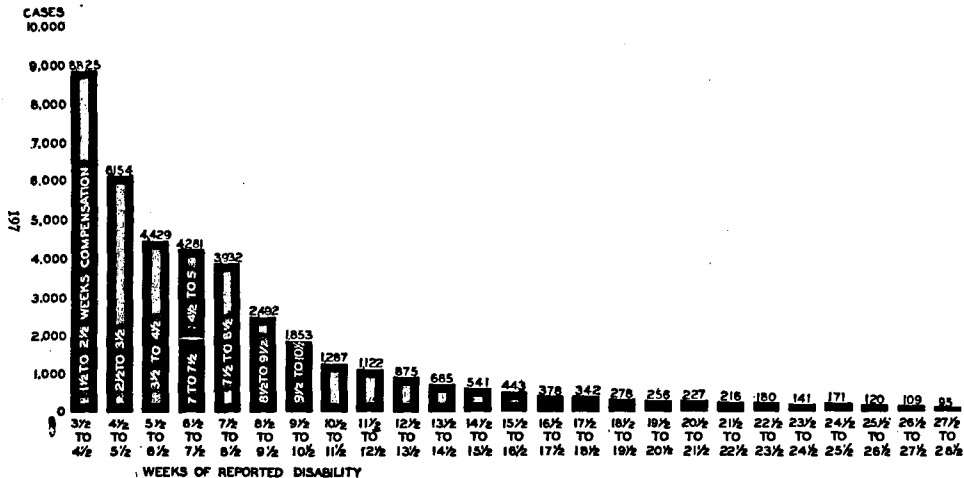
On January 1, 1925, the provision of the compensation law which required a waiting period of two weeks was amended and the waiting period was made one week. During the half-year ended June 30, 1925, 5,469 cases were closed which would not have been compensable except for the reduction in the waiting period. These are included in the 76,216 cases closed in the fiscal year 1925. The 99,673 cases recorded for 1926 included 21,329 cases of a similar nature. Table 28 shows how these short-time cases have influenced the rising trend of the number of compensable cases.

TABLE 28: EFFECT OF REDUCTION IN WAITING PERIOD BETWEEN JULY 1, 1923 AND JUNE 30, 1926

	1923-24	1924-25	1925-26
Cases unaffected by reduction	72,983	70,747	78,344
Cases due to reduction .....	..	5,469	21,329
Total cases	72,983	76,216	99,673

Out of the total number of practically 100,000 compensation cases closed in the fiscal year 1925-26, at least 21% were due to the change in the waiting period. As the reporting of these cases becomes more perfect, it is very probable that they will make up as much as 25% of all compensable cases. Table 29 shows the effect of the decrease in waiting period on the amount of compensation awarded in the fiscal year 1925-1926. The total cost of compensation was increased by \$945,891, or 3.4%, as a result of this change. The cost of cases in which the period of disability was greater than for those shown in the table was not increased by the reduction in the waiting period because of the operation of the retroactive clause.

CHART 6: NUMBER OF COMPENSATED CASES, WEEKS OF COMPENSATION AWARDED AND DURATION OF REPORTED DISABILITY IN EXCESS OF 3½ WEEKS, NEW YORK STATE



198 WORKMEN'S COMPENSATION IN NEW YORK

TABLE 29: COMPENSATION COST DUE TO REDUCTION IN WAITING PERIOD, FISCAL YEAR ENDED JUNE 30, 1926¹

Period of Compensated Disability	Number of Cases	Amount of Compensation	
		Total	Added by Decrease in Waiting Period
1 day.....	3,089	\$8,620	\$8,620
2 days.....	3,498	20,407	20,407
3 days.....	3,155	26,845	26,845
4 days.....	2,786	31,452	31,452
5 days.....	2,672	37,868	37,868
6 days (7-day workers).....	70	1,046	1,046
1 week.....	6,059	102,018	102,018
1 week to less than 1½ weeks.....	5,225	11,819	89,715
1½ weeks to less than 2½ weeks.....	13,652	444,792	232,006
2½ weeks to less than 3½ weeks.....	9,262	464,234	159,754
3½ weeks to less than 4½ weeks.....	6,418	431,370	110,842
4½ weeks to less than 5½ weeks.....	4,674	396,254	81,229
5½ weeks to less than 6½ weeks.....	2,540	255,441	44,089
Total.....	63,100	\$2,332,166	\$945,891

¹ New York State Department of Labor, Special Bulletin No. 148, p. 8.

DISTRIBUTION OF COMPENSATED CASES BY INDUSTRY

The distribution of compensated injury cases according to industrial groups shows that 41.4% of accident cases occur in manufacturing industries. This does not necessarily signify that manufacturing is the most hazardous occupational field, since New York is primarily a manufacturing state, and the aggregate manufacturing exposure is consequently very great. It is impossible, however, in the absence of comprehensive exposure data to determine accurately the relative hazard of the several industrial groupings.

The distribution of compensated cases among the several industrial groups, both by actual number and by the ratio which each group bears to the total, is shown in Table 30 for each type of disability. The number of cases attributable to each industrial group and the division of each group's cases according to type of disability is shown in Table 31. During the fiscal year 1923-24, nearly 45% of all closed awards were made for injuries which occurred in manufacturing. A further subdivision shows that 27% of the deaths, over 50% of the permanent partial disabilities and 43% of the temporary cases occurred in this group. In 1924-25, the

TABLE 30: DISTRIBUTION OF COMPENSATED CASES BY INDUSTRY AND EXTENT OF DISABILITY, JULY 1, 1923 TO JUNE 30, 1926¹

Industrial Group	Total Cases	Death and Permanent Total	Permanent Partial	Temporary	Death and Permanent Total Per Cent	Permanent Partial Per Cent	Temporary Per Cent	Total Per Cent
<i>1923-24</i>								
Manufacturing.....	32,533	324	7,845	24,364	1.0	24.1	74.9	100.0
Construction.....	13,361	261	2,739	10,361	2.0	20.5	77.5	100.0
Transportation and Public Utilities.....	13,654	295	2,322	11,037	2.2	17.0	80.8	100.0
Trade.....	5,931	76	1,089	4,766	1.3	18.3	80.4	100.0
Clerical and Personal services.....	5,589	132	1,166	4,291	2.4	20.9	76.7	100.0
Mining and quarrying.....	688	36	125	527	5.2	18.2	76.6	100.0
Agriculture.....	458	7	85	366	1.5	18.6	79.9	100.0
Other.....	769	..	155	614	..	20.2	79.8	100.0
All Industries.....	72,983	1,131	15,526	56,326	1.6	21.9	77.2	100.0
<i>1924-25</i>								
Manufacturing.....	31,254	305	7,098	23,851	1.0	22.7	76.3	100.0
Construction.....	15,632	280	3,422	11,930	1.8	21.9	76.3	100.0
Transportation and Public Utilities.....	13,561	289	2,399	10,873	2.1	17.7	80.2	100.0
Trade.....	6,759	92	1,251	5,416	1.4	18.5	80.1	100.0
Clerical and personal services.....	7,030	147	1,415	5,468	2.1	20.1	77.8	100.0
Mining and quarrying.....	762	33	157	572	4.3	20.6	75.1	100.0
Agriculture.....	518	5	121	392	1.0	23.3	75.7	100.0
Other.....	700	1	137	562	.1	19.6	80.3	100.0
All Industries.....	76,216	1,152	16,000	59,064	1.5	21.0	77.5	100.0
<i>1925-26</i>								
Manufacturing.....	41,245	280	7,868	33,097	.7	19.1	80.2	100.0
Construction.....	20,464	304	3,670	16,490	1.5	17.9	80.6	100.0
Transportation and Public Utilities.....	17,627	286	2,455	14,886	1.6	14.0	84.4	100.0
Trade.....	9,218	79	1,406	7,733	.9	15.2	83.9	100.0
Clerical and personal services.....	9,091	152	1,593	7,346	1.7	17.5	80.8	100.0
Mining and quarrying.....	970	37	155	778	3.8	16.0	80.2	100.0
Agriculture.....	684	13	126	545	1.9	18.4	79.7	100.0
Other.....	374	..	54	320	..	14.4	85.6	100.0
All Industries.....	99,673	1,151	17,327	81,195	1.2	17.4	81.4	100.0

¹ New York State Department of Labor, Special Bulletins 142, 146, and 148.

percentages were somewhat lower. Construction and transportation and public utilities furnish a considerable number of compensation cases. During 1923-24 each of these two groups

200 WORKMEN'S COMPENSATION IN NEW YORK

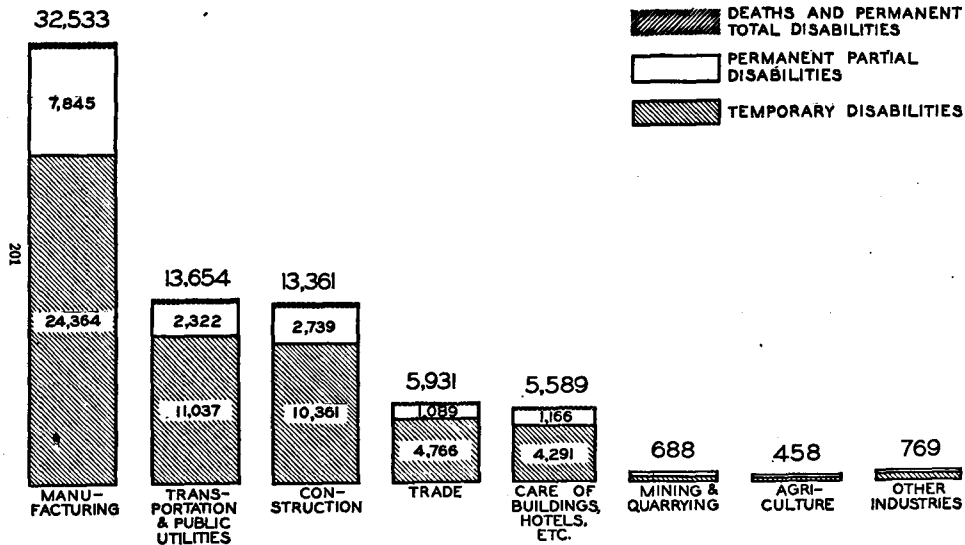
TABLE 31: PER CENT OF COMPENSATED CASES IN EACH CLASS OF DISABILITY, BY INDUSTRY, JULY 1, 1923 TO JUNE 30, 1926¹

Industrial Group	Total Cases	Per Cent of Total	Per Cent of Total		
			Death and Permanent Total	Permanent Partial	Temporary
<i>1923-24</i>					
Manufacturing.....	32,533	44.5	28.6	50.5	43.2
Construction.....	13,361	18.3	23.0	17.6	18.3
Transportation and Public Utilities.....	13,654	18.7	26.0	14.9	19.5
Trade.....	5,931	8.1	6.7	7.0	8.4
Clerical and personal service.....	5,589	7.6	11.6	7.5	7.6
Mining and quarrying.....	688	.9	3.1	.8	.9
Agriculture.....	458	.6	.6	.5	.6
Other.....	769	1.0	..	1.0	1.0
All Industries.....	72,983	100.0	100.0	100.0	100.0
<i>1924-25</i>					
Manufacturing.....	31,254	41.0	26.5	44.3	40.4
Construction.....	15,632	20.5	24.3	21.4	20.2
Transportation and Public Utilities.....	13,561	17.8	25.1	15.1	18.4
Trade.....	6,759	8.9	8.0	7.8	9.2
Clerical and personal service.....	7,030	9.2	12.8	8.8	9.3
Mining and quarrying.....	762	1.0	2.8	1.0	1.0
Agriculture.....	518	.7	.4	.8	.6
Other.....	700	.9	.1	.9	.9
All Industries.....	76,216	100.0	100.0	100.0	100.0
<i>1925-26</i>					
Manufacturing.....	41,245	41.4	24.3	45.3	40.8
Construction.....	20,464	20.5	26.4	21.2	20.3
Transportation and Public Utilities.....	17,627	17.7	24.8	14.4	18.3
Trade.....	9,218	9.3	6.9	8.2	9.5
Clerical and personal service.....	9,091	9.1	13.3	9.1	9.0
Mining and quarrying.....	970	.9	3.2	.8	1.0
Agriculture.....	684	.7	1.1	.7	.7
Other.....	374	.4	..	.3	.4
All Industries.....	99,673	100.0	100.0	100.0	100.0

¹ New York State Department of Labor, Special Bulletins 142, 146 and 148.

accounted for more than 18% of the total number, but in 1924-25 the number of cases attributed to construction increased to over 20%, while a slight decrease was shown for transportation and public utilities. These three groups combined are responsible for 80% of all cases.

CHART 7: COMPENSATED DISABILITY CASES, BY INDUSTRIES, NEW YORK STATE, FISCAL YEAR ENDED
JUNE 30, 1924



202 WORKMEN'S COMPENSATION IN NEW YORK

While the manufacturing group has the highest proportion of permanent partial disability cases, its death and permanent total disability rates are lower than in any other group, if the small number of cases in the agricultural group for 1924-25 is disregarded. Death and permanent total disability rates in the construction group are about twice as high as in manufacturing. Transportation and public utilities, as one group, shows a death and permanent disability rate of over 2%. Its temporary total disability rate is higher and the permanent partial rate lower than for any other group. The large proportion of deaths and permanent total disabilities in the mining and quarrying group indicates the great hazards of these industries.

WAGE AND AGE DISTRIBUTION OF INJURED EMPLOYEES

The wages of injured employees, as tabulated from the records of the cases in which closing awards were made during the year ended June 30, 1926, are given in Table 32. These wages ranged from less than \$1.50 to \$400.00 per week for both male and female employees, considered as separate groups. The weekly wage of 59,917 employees amounted to \$30.49 or less. This group represented over 60% of the total of 99,673. Those employees whose wages averaged \$30.00 or less per week received compensation at the rate of two-thirds of their wages, while for the remaining 39,756 employees the rate of compensation decreased as the weekly wage increased, since all the employees in this group received the maximum benefit of \$20.00 per week. The median wage for males was between \$28.50 and \$29.49; for females between \$16.50 and \$17.49, and for all employees between \$28.50 and \$29.49, showing the comparatively small proportion of women among the total number of injured employees. The median wage means that there were as many employees receiving wages above this amount as below, and consequently it may be taken as a fair average. Almost half of the male employees who received compensation earned more than \$30.00 per week and were compensated at the maximum rate of \$20.00.

The ages of injured employees, as tabulated from the rec-

TABLE 32: WEEKLY WAGES OF INJURED EMPLOYEES IN COMPENSATED ACCIDENTS, JULY 1, 1925 TO JUNE 30, 1926¹

Weekly Wages	Number of Cases			Weeks of Disability	Total Compensation
	Males	Females	Total		
Up to \$2.49.....	16	16	32	369	\$2,571
\$2.50- 4.49.....	34	66	100	2,072	6,956
4.50- 6.49.....	77	98	175	3,067	17,607
6.50- 8.49.....	124	174	298	4,451	43,515
8.50- 10.49.....	205	237	442	4,609	48,593
10.50- 12.49.....	706	841	1,547	16,129	162,991
12.50- 14.49.....	1,514	1,144	2,658	27,340	345,072
14.50- 16.49.....	1,408	722	2,130	22,207	304,492
16.50- 18.49.....	3,228	763	3,991	47,713	698,708
18.50- 20.49.....	4,546	670	5,216	60,126	1,015,738
20.50- 22.49.....	4,966	444	5,410	67,054	1,221,193
22.50- 24.49.....	10,259	510	10,769	131,529	2,535,725
24.50- 26.49.....	7,717	221	7,938	92,372	2,054,848
26.50- 28.49.....	5,637	167	5,804	68,413	1,528,367
28.50- 30.49.....	12,937	470	13,407	159,449	4,116,817
30.50- 35.49.....	14,348	265	14,613	187,437	5,733,019
35.50- 40.49.....	7,969	175	8,144	107,341	2,753,928
40.50- 45.49.....	3,562	68	3,630	48,559	1,098,238
45.50- 50.49.....	4,688	89	4,777	71,095	1,725,552
50.50- 60.49.....	4,024	59	4,083	62,807	1,589,513
60.50- 70.49.....	3,615	28	3,643	62,451	1,495,686
70.50- 80.49.....	373	4	377	6,503	200,560
80.50- 90.49.....	291	8	299	5,974	204,673
90.50-100.49.....	87	6	93	1,401	45,550
100.50-150.49.....	56	2	58	1,031	30,449
Over -150.49.....	9	3	12	223	4,043
Not Specified.....	19	8	27	38	11,072
Total.....	92,415	7,258	99,673	1,261,760	\$28,995,476

¹ New York State Department of Labor, Special Bulletin No. 148.

ords of cases in which closing awards were made during the year ended June 30, 1926, are shown in Table 33. The ages of injured employees ranged from 9 to 96 years for male employees, and from 10 to 96 in the case of female workers. The median age was 35 years for males and 29 years for females. There is a tendency to report ages in multiples of five, particularly after the age of 30. In 11% of the total cases the age was not specified. The study of accident frequencies in different age groups, and particularly of the predominating type of disability in the various groups, offers a fruitful field for study. It is significant, for example, that the frequency rate in the male death cases at 60 years and older is over two and one-half times the rate at the lower ages.

TABLE 33: AGES OF INJURED EMPLOYEES IN COMPENSATED ACCIDENTS BY SEX AND DISABILITY, JULY 1, 1925 TO JUNE 30, 1926

(Source: New York State Department of Labor)

Ages	Total Cases	Males				Females				
		Total	Disability			Total	Disability			
			Death and Permanent Total	Perma-nent Partial	Temp-orary		Death and Perma-nent Total	Perma-nent Partial	Temp-orary	
9	2	2	..	1	1	..	..	..	1	
10	2	1	..	1	..	1	..	..	..
11	2	..	..	..	..	2	..	..	2	
12	3	2	..	1	1	1	..	..	1	
13	9	9	..	3	6	..	..	..	..
14	28	25	1	4	20	3	..	..	3	
15	189	160	1	26	133	29	..	2	27	
11-15	231	196	2	34	160	35	..	2	33	
16	821	631	(1) ¹	9	90	532	190	..	23	167
17	1,497	1,149	(1)	8	169	972	348	..	45	303
18	2,586	2,079	(1)	13	297	1,769	507	..	59	448
19	2,619	2,243	(1)	19	297	1,927	376	1	41	334
20	2,473	2,162	(1)	16	298	1,848	311	..	30	281
16-20	9,996	8,264	(2)	65	1,151	7,048	1,732	1	198	1,533
21-25	14,860	13,665	(1)	113	1,937	11,615	1,195	3	155	1,037
26-30	13,401	12,580	(3)	111	2,053	10,416	821	0	104	717
31-35	11,713	11,093	(1)	114	2,025	8,954	620	2	93	525
36-40	11,465	10,837	(4)	133	2,110	8,594	628	1	125	502
41-45	8,526	8,113	(2)	114	1,617	6,382	413	2	71	340
46-50	7,072	6,693	(4)	105	1,442	5,146	379	0	81	298
51-55	4,951	4,742	(5)	88	1,090	3,564	209	0	61	148
56-60	3,628	3,462	(6)	100	722	2,640	166	2	39	125
61-65	2,065	1,984	(5)	78	445	1,461	81	1	25	55
66-70	1,083	1,048	(5)	49	230	769	35	0	10	25
71	75	74	..	2	14	58	1	1	..	..
72	112	109	..	12	26	71	3	..	..	3
73	66	63	..	4	15	44	3	..	1	2
74	66	64	..	5	11	48	2	1	..	1
75	59	58	..	3	13	42	1	..	1	..
71-75	378	368	..	26	79	263	10	2	2	6
76	48	46	(1)	4	6	36	2	1	..	..
77	24	24	..	..	5	19	..	..	..	..
78	14	14	..	..	5	9	..	..	..	..
79	15	14	..	..	2	12	1	..	..	1
80	9	8	..	..	1	7	1	..	1	..
76-80	110	106	(1)	4	19	83	4	1	1	2
81	2	2	..	..	..	2	..	..	..	..
82	5	5	..	..	1	4	..	..	..	..
83	2	2	..	..	1	1	..	..	..	..
84	2	2	..	..	1	1	..	..	..	..
85	1	1	..	..	..	1	..	..	..	..
81-85	12	12	..	0	3	9	0	0	0	0
Over 85	2	1	..	0	0	1	1	0	0	1
Not specified	10,176	9,248	(2)	34	1,295	7,919	928	0	106	822
Total	99,673	92,415	(41)	1,136	16,254	75,025	7,258	15	1,073	6,170

Figures in parentheses show the number of permanent total cases.

ADMINISTRATIVE PROBLEMS

The Referee System

The crux of the administrative problem in New York State workmen's compensation is the referee. He is the official who hears the claims and renders the decision in the first instance. Referees are appointed by the Industrial Commissioner for an indeterminate term. The law specifies no qualifications for referees nor does it fix their salaries. About twenty-eight referees are serving in different parts of the state at the present time. In addition to this number, certain clerks and examiners in the Labor Department are from time to time designated by the commissioner to sit as acting referees.

The decision of a referee is declared by law to be the decision of the Industrial Board, unless that Board on its own motion, or on application made to it, orders otherwise. Unless the Board changes the decision, the findings of the referee on all questions of fact are final; and questions of law can be reviewed only by the Appellate Division of the Supreme Court. The conservative estimate that the awards of one referee may easily aggregate a million dollars a year indicates the importance of the referee's power. It is inevitable that an official clothed with such extensive powers must exert a large influence in the administration of the compensation law. This power, if placed in the hands of an unqualified or biased referee, might easily bring the administrative procedure into disrepute, while even under the most favorable conditions the satisfaction of both parties to a claim can hardly be expected.

The compensation law provides that hearings on cases shall be informal and not bound by legal rules of evidence. The purpose of this provision was undoubtedly to expedite settlements through the simplification of procedure; but it has placed the referee in a difficult position, since he must be judge and often advocate for the claimant at the same time. Since hardship and injury always excite sympathy, particularly if the victim is poor or if he is unable to cope on even terms with the insurance carrier's attorney because of illiteracy or foreign birth, the referee frequently finds it

206 WORKMEN'S COMPENSATION IN NEW YORK

difficult to remain absolutely impartial and decide a case entirely on its merits. If he is not actuated by a high sense of responsibility for the just administration of the law, he is in a position to make of workmen's compensation a mere cloak for general health insurance at the expense of the employer and insurance carrier.

The two reasons for the increasing cost of workmen's compensation in New York State most frequently mentioned by insurance carriers and employers are the increased benefits provided by law and the growing liberality of administrative interpretation. One of the insurance carriers which replied to the Conference Board's questionnaire believes that the administration is fair in intention but questions whether the referees as a whole have grasped the principle of the law. Two carriers think that the liberality is no greater now than formerly; that there is not so much a growing liberality as there is a constant liberality which has been exhibited from the beginning. One carrier notices a greater liberality in small communities, and another believes that the increased loss ratio since 1923 is largely attributable to the increased liberality of referees. Other replies stress this liberality, but do not specify whether it has markedly increased in recent years. One of the most frequent indications reported by carriers as evidence of a too sympathetic administration of the law is the large number of reversals of referees' decisions. One carrier doing a large volume of compensation business reports that appeals were found to be justified in 69.4% of their appealed cases. In the opinion of one large carrier the amounts represented by unjustified liberality, although relatively small in individual cases, amount to a large sum in the course of a year.

Employers, also, were outspoken in expressing their convictions as to the manner in which the compensation law was being administered through the referee system. Of the number of employers who sent their replies to the Conference Board's questionnaire, only one out of five believed that as a general rule the referees were fair in their findings of fact.

The usual complaint is that the referee acts not as a judge but as counsel for the injured man. Many employers de-

clare that the evidence of the injured man or the testimony of his doctor, frequently a physician not in good standing, is accepted over and above reliable witnesses and the diagnoses of physicians and surgeons of repute. A few employers are particularly dissatisfied with the awards for facial disfigurement, while a greater number find that the referees are most unfair in handling cases of permanent partial disability, making awards out of all proportion, and in placing such cases on the calendar too frequently.

As an illustration of the character of evidence upon which awards have been based, a case involving the death of a young man of twenty is cited. After the first hearing, at which the parents declared that the decedent had given nothing to their support, the referee reopened the case. At the second hearing the parents testified that their son was paying, during his life, eight dollars a week for board; and as it was worth only six dollars, he was contributing two dollars to the support of the family. An award was made on the same basis as if the decedent had been the sole support. There were, it seems, several brothers and sisters in the family. The father was working steadily at good wages and was in reality taking care of the family. At one time the family was drawing fourteen dollars a week as compensation for the death of their son, and the insurance company had to establish a reserve of \$20,000 to cover the cost of the case.

Two cases from one company are cited as follows: "We have had several instances where the employees themselves were very well satisfied with the award but many other employees felt they got something that was not coming to them in strict justice . . . an employee testified that he was employed because he was a good baseball catcher, with the understanding that he should work regularly in the Company's stockrooms at unskilled work. He testified that one day when work was slack in the department, without the foreman's knowledge, he went to the carpenter shop, where no one was working, started the buzz saw, with which he was wholly unfamiliar and endeavored to saw a piece for a card table, sawing off four fingers. He testified that this card table was for use of the members of the ball team while being transported to and from home in a truck. The whole

case hinged on his statement that when he was hired the superintendent told him that he was to manage the team and do anything that he thought was to the interest of the team. Of course, neither the superintendent nor this employee contemplated the interpretation of the superintendent's remark to extend to his use of machinery. . . ."

"Another case in point was that of a workman who testified that he had been asked to come back after regular hours to operate a machine. As soon as the job was done he went to the time clock and discovered that there was still about ten minutes before the time clock would register the next quarter hour. He testified that it was customary for the Company to pay by the quarter hours registered on the time clock. Having to wait a few minutes he decided to go to the carpenter shop and cut out some boards for a box for his son. The carpenter shop was in another building some distance away. While using the saw he sawed off two fingers. During the foreman's investigation and the safety engineer's investigation he told this story substantially as outlined. However, during his testimony before the referee he added the statement that the very minute during which he sawed off his fingers he was sawing a board to be placed under a floor rack on which he usually stood while working. No reference had been made to the Company's investigator of this job until employee came before the referee. The workman testified that his foreman had told him that he must not use the saw but that he did not believe the foreman meant it. He testified that he had, from time to time, been detailed to do various maintenance jobs about the plant but that no one had authorized the repairs to this floor rack. The referee remarked that inasmuch as employee was making this stick for the floor rack he was showing an interest in his work and awarded compensation."

Among cases mentioned as examples of over-payment in permanent partial disability is the case of a man who slightly injured his shoulder by falling from a railroad flatcar when blocking a shipment. This injury did not interrupt his usual work or impair his earning capacity. When the case was heard by the referee he was awarded two-thirds of the loss of his right arm for a period of eighteen months, the

amount of compensation going to about \$1,700. Another employee sustained a broken ankle, for which he was treated at the hospital for a few weeks and then at home. The case was decided as a permanent disability, and an award was made upon the basis of the loss of use of a limb for life. The man returned to work several months ago. He is performing the same duties and is still drawing payments on the compensation award. In the matter of facial awards, it is thought by a few employers that too many small amounts are given for trivial disfigurement, and also that too liberal awards are paid. An interesting case in this connection is that of a man who had received an injury while using some forbidden apparatus, but who had not lost time and had left the employ of the company. He made a claim for a scar and received \$250. At the time when the award was made the scar was red and was noticeable from a distance of two or three feet, but two months later it was hardly visible. However, no attention was paid to the doctors who predicted this.

The Referee System vs. the Agreement System

Some such system as hearings by referees is inevitable under the New York procedure which requires that there must be a hearing upon every claim. No settlement made otherwise is valid. Opinions of employers upon the advantages of this system were varied. About one in four considered it an improvement over the previous agreement system. Twenty per cent had seen no change for the better or worse since the adoption of the system, and nine per cent declared that their payments had always been prompt. On the other hand, sixteen per cent complained that there had been delays in payments, and twenty-seven per cent objected to the system as a loss of time, a number of these declaring that their employees either did not wish to appear at the hearings or did not bother to appear and also that it meant a loss of money to employees. The remainder expressed themselves variously; some saying the method was too costly from every point of view, others that only important cases should be heard, while a small number of employers declared that the system of having every case heard gave the men an inflated idea of the amount of compensation they should receive.

210 WORKMEN'S COMPENSATION IN NEW YORK

The insurance carriers, as a rule, favor the agreement system, particularly in the many cases which are uncontroverted and which involve small amounts of compensation. Favorable comment is made by insurance carriers upon the experience with this system in other states, particularly in Massachusetts. The chief advantage urged in favor of the agreement system is the great saving to all parties concerned. It is contended that under the agreement system the expenses of the state for administration are lighter, the carriers need not employ such large staffs and that employees save time, wages and traveling expenses. Prompter settlements are also considered a feature of the agreement system. Some carriers believe that under the referee system many claims arise because the employee feels that he should try to get additional compensation because of his being summoned to a hearing, while the agreement system does not raise false hopes. Furthermore, it is pointed out that the "runner" evil would be minimized under the agreement system. No suggestion is made for the abolition of the referee system, but it is suggested that, in order to save time and expense and to relieve the crowded condition of the calendars, hearings should be confined to serious or doubtful cases and to cases involving large payments of compensation.

Considerable dissatisfaction was expressed by employers and insurance carriers with the frequent adjournment and postponement of cases and with the unlimited opportunity to reopen a closed case upon verbal or written request without disclosing the nature of the evidence to be introduced. This results in a rehearing in its entirety which is often attended by further adjournments. Frequently, it is said, referees reserve decisions and, after a period of time, some of the cases again appear on the calendar. Upon such reappearance, according to one carrier, the case is generally reopened for further presentation of evidence. It was suggested that if referees were able, before taking the testimony, to obtain stipulations and admissions of both parties on all admissible facts, thus narrowing the issue to controversial questions, time at each hearing could be saved.

Many carriers mention as a burdensome feature of the law that too long a period after the injury in which the em-

ployee may file a notice is allowed, and that too many excuses for not filing a notice of injury are accepted by referees. A smaller number of carriers emphasize the need of prompt reporting of accidents by employers, since only by taking a case up immediately can comprehensive evidence be obtained and justice done both to the injured employee and the assured. One carrier believes that insufficient time is allowed between the date of injury and the date that the first payment becomes due to permit a thorough investigation of the accident and resulting injury.

A problem of almost equal size is the power of the Board to reopen cases with no time limit. One company cites an instance of an attempt to reopen a case recently which had been closed on May 28, 1917. It is thought by a few carriers that the appeal procedure is too involved, and it has been noticed that there is frequently a delay on the part of the Board in signing findings after an appeal has been taken and the findings prepared by the Attorney General's office. As a protective measure, appeals are often taken for the purpose of the correction of mistakes, award notices or for reviews by the Industrial Board. This is the only method of protection against execution during the time in which errors are corrected or the Board reviews facts. The suggestion is made by some carriers that a stay of execution on either the award or penalties during the period of review would eliminate many appeals. In this connection comes the usual objection to the fact that appeals may be made only on questions of law.

The remaining complaints against the burdensome features of the administration are varied. In considering the methods of the Board, dissatisfaction is expressed with the tendency of having only one member sit on a review of cases. There is some feeling that members of the Board and the referees are "sympathetic." Certain clarifications of the law are also desired. One carrier would like to have section 14 simplified, so that the computation of average weekly wages could be changed. This carrier makes the charge that the five offices of the Industrial Commissioner do not make computations in the same manner. Another would like to have the provisions relating to subcontractors, contained in sections

10, 11 and 56, clarified. A small request, and yet one which would, if carried out, do much to smooth the whole business of administration, is that the Department of Labor should exercise greater care in the details of sending out notices of hearing, to show the date of the accident, and also in making out award sheets and notices of decisions, as the frequent clerical errors are a cause of much trouble and delay to the carriers.

Malingering and Fraudulent Claims

Any law which provides for the dispensing of money payments inevitably carries with it the temptation to take advantage of its provision if the opportunity for doing so is presented, and workmen's compensation is no exception to the rule. It is a psychological phenomenon that dishonesty at the expense of a large company will be indulged in by an employee who might not consider taking similar advantage of an individual. And so there has been and always will be a considerable number of fraudulent compensation claims and a tendency on the part of some employees to malingering. In realizing this fact and endeavoring to guard against it, the problem should not be so magnified as to lose sight of the fact that the large majority of employees are honest and that, while naturally trying to obtain all the benefit to which the law entitles them, they do not attempt to exceed this limit.

There is a general agreement among the insurance carriers, who reported to the Conference Board, that there is no marked tendency toward malingering, but on the other hand, its existence in a varying degree is universally acknowledged. One-third of the carriers find very little malingering; and one company, while noting an increase, does not believe the tendency to be general. When malingering cases appear, however, they are known by their hallmarks. Generally they are found among back and head cases, but one company reports that frequently old age and congenital defects keep men, ordinarily faithful, from returning to work as soon as possible. Rather pronounced epidemics of malingering have been noticed at certain periods, particularly during business depressions. The reasons for this are both obvious and natural. Also, a more than ordinary tendency toward malingering is

reported in certain seasonal and part-time occupations as, for example, in the building trades between November and April. Certain racial groups are considered by some carriers to be more prone to malingering than others. One company localizes malingering in New York City and Buffalo among the "foreign born." It has also been observed that members of fraternal lodges, who receive sick benefits in addition to compensation, often find the temptation to take the fullest advantage of these gratuities too strong.

In examining the material furnished to the Conference Board by employers on the subject of malingering, it has become evident that the character of the work, type of labor and employment conditions are important factors. Few employers believe that all their men are actual or potential malingerers; usually they say that most of the men are honest, but that a few are not. In several cases it was noted that dishonesty was found usually among floating laborers. But in immense plants, where men with diverse backgrounds are employed, malingering is evidently more general than among a small group of homogeneous, highly skilled workers. In cases where the tendency to malingering was evident in the past, it was found to increase with the shortening of the waiting period. In a few instances, however, employers report that their men, now that wages are high, are beginning to realize that getting back to the job as soon as possible means more money. One company finds that malingering occurs particularly in abnormal times.

The retroactive feature contained in many of the workmen's compensation laws can hardly avoid providing an additional temptation to malingering in certain cases. In New York State, if the disability period exceeds seven weeks, the employee receives compensation for the waiting period. An employee who is able to return to work at the end of the sixth week of disability may take advantage of the law, if he is so inclined, and remain on the disability list until the seventh week has elapsed in order to obtain the additional compensation for the waiting period. Table 34 shows the amounts which an employee would receive in compensation and wages for a period covering seven weeks and one day, for different disability periods, with wages at \$30 and \$42 a week.

214 WORKMEN'S COMPENSATION IN NEW YORK

Comparisons are made using both a one-week and a two-week waiting period. Reference to the table shows that even under the present one-week waiting period it is possible for an employee to receive more money by waiting for the seven weeks to elapse than by returning to work earlier.

TABLE 34: COMPARISON OF WAGES EARNED AND COMPENSATION BENEFITS ACCORDING TO WEEKS OF DISABILITY UNDER SEVEN WEEKS RETROACTIVE PROVISION
(Source: National Industrial Conference Board)

Amount Received in Compensation and Wages during Period of 7 Weeks and 1 Day			Amount Employee Would Receive in Compensation by not Working during Period of 7 Weeks and 1 Day	
<i>Two weeks waiting period</i>				
Wages at \$30.00 per week				
By Returning to Work at End of	Compensation	Wages	Total	Total
2 weeks	0	\$155	\$155	\$143
3 "	\$ 20	125	145	"
4 "	40	95	135	"
5 "	60	65	125	"
6 "	80	35	115	"
7 "	100	5	105	"
7 " and 1 day	143	0	143	"
Wages at \$42 per week				
5 weeks	\$ 60	\$ 91	\$151	\$143
6 "	80	49	129	"
7 "	100	7	107	"
7 " and 1 day	143	0	143	"
<i>One week waiting period</i>				
Wages at \$30 per week				
4 weeks	\$ 60	\$ 95	\$155	\$143
5 "	80	65	145	"
6 "	100	35	135	"
7 "	120	5	125	"
7 " and 1 day	143	0	143	"
Wages at \$42 per week				
5 weeks	\$ 80	\$ 91	\$171	\$143
6 "	100	49	149	"
7 "	120	7	127	"
7 " and 1 day	143	0	143	"

Fraudulent claims generally fall under one of a number of heads: injuries not actually sustained in employment, previous disability and aggravation of previous ailment, failure to make a prompt report of injury and alleged injuries which are neither visible nor measurable. Although any kind of

injury may be declared by employees to have resulted from employment when it had actually occurred outside the plant, hernia, blood-poisoning and sprains are most frequently used as bases for false compensation claims. A case considered by the employer as fraudulent was described as follows:

"One death by cancer of the leg was suffered by a carpenter working for this Company, who for some time after his sickness did not refer to any accident while employed. After being interviewed by a lawyer he claimed that he had strained the leg one day while working and because of the strain he was suffering from a cancer. Expert medical testimony was to the effect that it was very improbable that cancer was caused from such an injury, however, an award was made upon the man's death."

Another and more obvious case of fraud occurred in a company where a man who had left because he was not satisfied with his wages, six weeks later demanded compensation for blood-poisoning and was awarded compensation for the loss of a leg, although there was no evidence that the injury had occurred at the plant.

Another type of fraudulent claim is usually made for strains. A company which had made a practice of notifying its workers two or three weeks ahead when it expected to close down, found that such an announcement brought forth so large a crop of strained backs, that it discontinued the early notification, with the result that fewer ailments of this type were reported. The borderline between this kind of fraudulent claim and actual cases of neurosis is difficult to distinguish. One or two employers suggest that neurosis cases are more quickly cleared up if the patient is not present to hear himself discussed and money settlements decided on. The number of fraudulent claims appears not to be as great as the number of malingering cases.

Aggravation of Former Injuries

Aggravation of previous disease and second injury are problems closely allied. Some employers report that they are using or will be forced to adopt physical examinations before employment as a protection against such cases. Hernia, always a problem, comes under this classification, because

216 WORKMEN'S COMPENSATION IN NEW YORK

medical men believe that it almost always results from an inherent and latent weakness in the abdominal wall; and, of course, slight bruises and cuts light up syphilitic and tubercular conditions. An eye case is reported by an employer, where a man brought to his occupation a disease of the eye which may or may not have been intensified by his employment, and this is but one of many. One noteworthy instance of aggravation is mentioned by a firm which had an old employee who had been removed from his job and given light work because of a tendency toward heart trouble. One day he displayed a hand with a swelling which he claimed had come from striking it on the underside of the desk when sweeping several days before. When he was examined later, after he had lost the full use of his hand, it was the opinion of the doctor that the bruise would not have been bothersome if it had not been aggravated by a tubercular condition. The referee made an award of \$2,543.94, with medical expenses of \$256.82. The man was told not to return to work and paid a sum by the company which, with the award, was more than his former wages. The company would have cared for the man of its own accord, because he was an old employee; but it felt, in addition to believing that this was an excellent illustration of aggravation of disease from a very minor injury, that the referee was unfair in making an award for a bruise whose occurrence at the plant was a matter of conjecture.

In certain second injury cases fraudulent dealing is apparent where, so it is reported, men who are on the company records as having some kind of physical impairment in a limb deny the existence of the previous disability when they make claims for an injury to the same member. An example of second injury was cited by an employer because he felt that it indicated a dangerous tendency. An employee struck a finger against a snap flask pin, breaking the skin. The injury would not have been sufficient to disable him if it had not been for the condition of his finger at the time, which had been hurt several years ago and had been a cause of trouble ever since. A more flagrant case is that of a man, with a deformed and crippled hand, who broke one finger of that hand. Compensation was awarded for seventy per cent

This problem of pre-existing disease or disability raises a question of the utmost seriousness from the social standpoint. If an employer is to be held responsible for the full consequences of a disease or disability which happens to culminate while the man is employed by him, he will naturally insist upon physical examination before accepting applicants for employment, in order to protect himself. This would inevitably weed out a considerable number of wage earners who are perfectly able to perform their regular tasks but who, for one reason or another, are likely to become permanent liabilities upon the company and hence are bad risks. The employer can not be censured for declining to undertake what appears to him as the permanent support of an employee who is likely at any time to become a dead weight upon the business. And on the other hand, if poverty or charity is the only recourse of such workers, the whole purpose of workmen's compensation laws will be frustrated. A problem is presented here which is worthy of serious consideration by legislators and compensation administrative bodies, as well as by various welfare organizations which are constantly urging greater liberalization of the compensation law both by statute and by interpretation.

Lump-Sum Awards

Section 25 of the workmen's compensation law reads: "The Industrial Board, whenever it shall so deem advisable, may commute such periodical payments to one or more lump sum payments to the injured employee, or, in case of death, his dependents, provided the same shall be in the interests of justice."

Insurance carriers are agreed that experience has taught them to discourage lump-sum settlements as far as possible, and that they should be allowed only in exceptional cases. The outstanding objection to lump-sum settlements is the fact that such payments are not in keeping with the purpose of the law, which is to provide compensation where it is most needed. Especially is this true of permanent partial cases for the reason that weekly payments under the act are intended to take care of an injured employee's decreased earning capacity. And it is pointed out that the actual purpose

218 WORKMEN'S COMPENSATION IN NEW YORK

of the workmen's compensation act would be defeated by the payment of a lump sum. For the most part injured employees are not accustomed to handle large sums of money. When a larger amount than usual is placed at their disposal, the recipients often squander the money or are victimized by a "runner" or unscrupulous lawyer, and thus become a charge upon the community. One insurance carrier remarks that it is the duty of the carrier to co-operate with the state to the fullest degree in protecting the interests of the claimant. This carrier points out that only when lump sums are "given full consideration from the standpoint of the claimant's welfare, and when reasonable steps are taken to see that the money is properly and safely invested so as to yield an income, are they justified."

One company states that it has noticed an increasing tendency on the part of the referees to grant lump sums. Another company gives this warning "if granted too freely there will be a tendency to change the law from one of compensation in time of need to a rule for damages." Several carriers mention resort to subterfuge in obtaining a lump-sum payment and bear out their statements from their own records. One company cites this case:

"In commission file No. 105543 a lump sum was granted a widow for the purchase of a house. We ascertained that this house was shortly sold by the widow. Apparently she was not so desirous of a home as she was to get control of the money. Obviously she is now a free agent with none but herself to protect the proceeds she derived from the sale of the house."

Another insurance carrier deplors the payments of lump sums in total disability cases, giving this example:

"One case, quite recently, was held totally disabled and claimant applied for lump sum and award was granted by advance payments of 6-7 years down to 1932 to buy a farm whereby he could make a fair living for his family. After getting the money no farm was bought, but he took his family to Europe, squandered his money, and is now back seeking further advance."

Widows frequently apply for lump-sum settlements, anticipating an early remarriage. One carrier had an experience

(Commission No. 1923304) with a widow who applied for a settlement to enable her to go into a confectionery business. The insurance company opposed the claim because the widow was still a young woman, about 45, prepossessing in appearance, and might remarry. However, the Commission found that a lump sum would be in the interest of justice and granted her \$5,679.54. A short time later the widow remarried.

A large percentage of insurance carriers, however, recognize that there are exceptional cases where a lump-sum settlement is beneficial. In these cases are included those claimants who have sustained partial permanent injuries, or occupational diseases, and those who have developed traumatic neurasthenia.

In the first group mentioned the claimant's self-respect is preserved, because a lump-sum settlement enables him to engage in a respectable business, thereby removing him from the dependent class, improving his mental state, and restoring his self-confidence. One insurance company has had numerous experiences with lump-sum settlements, which have actually been in the interests of justice. An elderly man was suffering with arthritis. After the carrier had had his teeth extracted and a false set made for the claimant in order to rid his system of some of the poison, he informed the carrier that he had a friend in southern California who wanted him to go into partnership with him in a little store. The company's representative in Los Angeles investigated the situation and found that the business was profitable. The doctors advised the carrier that the climate in California would benefit the claimant. A lump sum was advanced to him sufficient to cover his railroad fare and interest in the store.

Another case in point was the purchase for a claimant of some property for \$2,000. The property consisted of a house and a small store. The carrier investigated property value in the community and the possibility of making a success of the store. They have kept a check on the business and have found that the man is doing well in his little store. Very frequently, where the whole family has had farming experience, farms have been purchased for a widow with boys old enough to do the work. Occasionally a mortgage which has

220 WORKMEN'S COMPENSATION IN NEW YORK

become in arrears during disability has been cleared by an advance lump-sum payment.

The medical director of the Workmen's Compensation Board usually urges lump-sum settlements in cases of neurosis or neurasthenia. All of the insurance carriers which have had experience with settlements in these cases report that the result of lump-sum payments is usually satisfactory. When the mind is at rest, a cure is frequently effected. If the mind is allowed to dwell on imaginary ills, an indefinite period of disability is the natural result. After a full settlement the injured man returns to his work and forgets his injury.

One insurance company reports that it has had no experience with a fraud. Most of the cases in which lump-sum settlements have been sought have involved non-resident alien dependents. This company has found that in case of lump-sum awards involving schedule losses, there have invariably been persons who were entitled to any balance of a specific award which remained unpaid at the death of the claimant, and that only the death of the entire family would relieve them of such payment. Consequently, they do not raise objections to lump-sum awards, unless the amounts are very large or there is reasonable ground to believe that the claimant's condition will improve sufficiently in the future to warrant a rehearing of the schedule award on the ground of decreased disability. Several insurance carriers believe that lump-sum settlements may be a means of disposing fairly of cases of doubtful liability, or those which have been unduly drawn out over a long period of time.

However, in non-schedule cases, satisfactorily paid or otherwise, a lump-sum settlement does not necessarily close the case, for at present any of these cases may be reopened by submitting an affidavit indicating further disability. The opinion of insurance men on this point is that in any case where the exact condition is known and described and where the referee or member of the board and state doctor approve the amount of the settlement as just and adequate, the payment as agreed upon should end the claim. The only exception should be where the condition grows worse, causing further disability than that contemplated at the time of adjustment.

One insurance company reports that the commission is willing to hear any facts presented by the carrier in opposition to a lump-sum settlement, and that if these facts are well founded the commission seldom makes an award.

While stating emphatically that in all cases lump-sum awards should be discouraged, three insurance companies make constructive criticisms which may aid in justifying them. Two companies insist that the awards should be trustee'd. One company urges that greater care be used in ascertaining whether the settlement is in the interests of justice to all parties and suggests that a copy of the appeal be sent to employer and insurance carrier, so that they may investigate the reason for the application. While avoiding mention of trusteeship, one company urges that safeguards be established for the disposition of the money in order that it may reach the source or serve the purpose for which it was granted.

General Considerations

In their replies to the Board, the insurance carriers make several suggestions for the improvement of the law and of administrative practice. These suggestions merit consideration because they represent experience in the handling of thousands of compensation cases rather than Utopian conceptions of an impracticable state of perfection. While it is true that insurance carriers are distinctly interested parties, it seems, nevertheless, that in many cases their recommendations would promote the best interests of all concerned.

The insurance carriers object chiefly to the frequent amendments to the compensation law which leave them in a constant state of uncertainty. Before they are completely adjusted to conditions brought about by one series of changes in the law, they are confronted with another. However, the carriers suggest certain changes which they believe would be beneficial to all interested parties. In order to keep down charges, supervision over doctors is urged and the adoption of some kind of fee schedule.¹ In case of a medical conflict,

¹ Chapter 553, Acts of 1927, provides that all fees for medical and surgical services, whether furnished by the employer or otherwise, shall be subject to regulation by the Industrial Board.

222 WORKMEN'S COMPENSATION IN NEW YORK

it is thought that an impartial specialist should be agreed upon by all the parties in interest and that his decision should be accepted. A small number of insurance companies believe that doubtful cases of neurasthenic disability may be satisfactorily ended by lump sums of two- or three-year payments, on the application of the carrier. In order to make payments for the loss of, or the loss of use of, members more just and fair to the injured individual, one carrier suggests the adoption of the scale of diminution of benefits according to advancing age, such as is in use in Wisconsin, while another carrier advocates the method of California, which considers not only the age but also the occupation of the employee in connection with the nature of his physical impairment. It is pointed out that eye cases would be less troublesome if the schedule sponsored by the American Medical Association of Ophthalmology were used and that much controversy would be avoided if some basis for measuring facial disfigurement were adopted.

The replies of insurance carriers to the Conference Board's questionnaire contain a number of minor suggestions to expedite the business of hearings and trials. One is that there should be a requirement for the presence of the claimant or his representative at the first hearing. It would also be beneficial, it is thought, if the statute stated specifically that employers, in signing form C2, should not be bound by their answers, for in this way statements of material facts covered by this original report of the accident would be subject to evidential modification. The referees and the board should be limited in the number of adjustments they make. In order to speed up the work it is suggested that the referee should have the opportunity to reopen cases for the purpose of correcting clerical or stenographic errors without having to apply to the Industrial Board for a review, which carries with it a so-called technical or protective appeal. If the penalty of \$100 for failure to pay within eighteen days were eliminated or the time extended, it is pointed out that more opportunity would be allowed for investigation. As it is, carriers controvert for self protection. Another carrier believes that a form should be adopted by the commission for use in connection with casts where a review of the referee's findings by the

board is desirable. Under the present system it is necessary to have a record printed and briefs of the entire case filed when an appeal is made. It is also urged that a letter requesting the review of any award, when simultaneously addressed to the injured and the commissioner, should act as a stay of execution until an answer to the request has been made.

In order to secure greater justice the suggestion is made that men of higher calibre should be selected for administrative positions and that their training should be improved. If the State Industrial Board should sit as a Board of Review, with at least three members hearing each appeal and a majority deciding, it is thought that the best interests of all would be served. A number of carriers recommend a change in the law which would permit them to take appeals directly to the court from the referee. When an appeal is pending in the Appellate Division, it is urged that the board should be prohibited from holding hearings on the same case. The other suggestions, which are more frequent and important but which have been discussed before, are the adoption of the agreement system, the right to take appeals to the courts on questions of fact and the shortening of the time limit for reopening cases.

MEDICAL PROBLEMS

Medical problems in connection with the workmen's compensation administration are of two kinds, those involving technical, physiological or pathological conditions and those having to do with the ethics of members of the profession. Difficulties reported by employers belong for the most part in the latter class. The mildest criticism is the lack of cooperation which a few doctors show in making out reports. The most general objections are that doctors accept false histories of cases which are entered as evidence, that they encourage disability and exaggerate injuries, and make excessive charges to employers and insurance companies in the belief that they can well afford to pay them. There is also some complaint that doctors are not sufficiently careful in estimating the loss of use of limbs. Bearing on the matter of charges, one company reports that the doctors in a certain

place immediately ask of an injured man by whom the bill is to be paid. Some employers feel that the doctors employed by the state are not unbiased. In addition to these complaints against the doctors themselves, the general rise in medical cost seems to some employers excessive. A number of plants find the upkeep of their own dispensaries expensive. Yet these company hospitals are found by a few employers to have a good effect on the morale of their forces.

Insurance carriers find medical problems particularly difficult, since they are so closely connected with the cost of doing business. Only one carrier reports that it has no medical problems; for the others, medical difficulties are a constant source of trouble. One carrier finds that, when employers delay their accident reports, the employee frequently gets into the hands of unscrupulous doctors before the employers are aware of it. Even more troublesome in their results are the failures of doctors to send in their reports promptly. This and some of the other complaints do not arise because of intentional mishandling of cases on the part of doctors, but because of natural and inherently honest reasons. One company finds, for instance, that the majority of doctors dislike to take the responsibility for a report that an injured man is able to return to work when the man still claims lack of complete recovery. Frequently companies have experienced difficulty in getting "clear-cut" opinions from doctors. Not only is there very often a lack of unanimity of opinion in a group of consulting physicians, but more than that, few doctors are willing to make definite statements of fact in puzzling cases. But these difficulties are understandable and are not peculiar to workmen's compensation.

There are other and more serious complaints. Chief among them is the constant increase in charges, aggravated by the belief that insurance companies can afford to pay, and the marked rise in the cost of x-rays and special treatments. A few companies believe that the use of electrical treatments, massages, baking and physiotherapy has been carried to the extreme; that the treatments have resulted in prolonged disability without commensurate benefit, and that they have frequently tended to fix in the minds of patients

the seriousness of their ailments. It has been found that some general practitioners take over surgical cases for which they are not fitted. Moreover, it is well known that a class of doctors, often incompetent, has grown up which makes a specialty of compensation cases. These doctors "indulge in subterfuges to get business" and frequently take care of all the papers for an injured man. Nor do they hesitate, according to the insurance carriers, to file false testimony, elaborating on injuries, overestimating the period of disability and overstating the percentage of loss where specific injury is involved. One company finds that these doctors are particularly numerous in New York City, and that they are "foreign born" and work among the "foreign born."

Among the medical problems which are hardest to settle are the cases involving loss of use. In the first place an effort is frequently made to determine the percentage of loss of use where only a short time has elapsed between the time of the cessation of treatment and the fixing of award. Furthermore, it is pointed out that there is no scientific basis for ascertaining the loss of use of a member and that the commission's doctors figure only the functional loss and not the anatomical defect, so that there is often a wide variation in opinion among consulting physicians. Eye cases come next in the order of the difficulties they present because of the lack of proper tests to measure loss of vision. They are followed by cases of pre-existing disease, head and back injuries, facial disfigurement, cancer, septicemia and neurosis. The most frequent type of aggravation of a pre-existing disease, according to one carrier, is an injury to an old arthritic joint, common in elderly claimants. Tuberculosis and rupture of a chronic ulcer are also very usual.

Strains and Hernia

There is a diversity of opinion among insurance companies about the problem of strains and hernia. One-third of insurance carriers find either no or very little difficulty in handling such cases. One carrier reports an improvement in the detection of fraud by referees, and two others consider the referees in New York State fair in this respect. But two-thirds of insurance companies find either strains or hernia

226 WORKMEN'S COMPENSATION IN NEW YORK

troublesome, and frequently both. One company calls strains a "nightmare," and another declares that "strained" or "painful" backs form a large class of controversial cases. This is largely due to the fact that strains have subjective symptoms. In connection with strains mention is made that the commission's doctors frequently make a finding on the basis of a muscle spasm which can be feigned. It grows more difficult, according to one company, to deal with hernias because of the custom of making an award prior to the time that medical treatment has progressed to a point where the extent of disability can be definitely determined.

Occupational disease cases do not constitute a problem to the insurance companies in New York State, according to the answers to the questionnaire. A majority of insurance carriers state that they have "no difficulty" with these cases, while those which have had a limited experience with them declare that they are satisfied with conditions as they are, or that they consider the New York law better than others in this respect.

ACCIDENT PREVENTION

It is axiomatic that accident prevention should be the starting point from which constructive improvement in the workmen's compensation situation must originate. Insurance carriers have taken a leading part in the constantly more extensive and intensive campaigns aimed at the reduction of industrial accidents. In fact, private insurance lays claim to the inauguration of safety work. It is short-sighted to make the statement, frequently heard, that safety work on the part of insurance carriers is dictated only by self-interest and by a desire to reduce losses in order to increase the margin of profit. Undoubtedly the close relationship between accidents and the carrier's financial position has stimulated accident prevention activity; but numerous examples of a broad-minded, generous attitude on the part of insurance carriers indicate that their conception of safety work and accident prevention is on a much higher plane than would be possible if it were simply aimed at the reduction of their own individual loss ratios.

As a part of their discussion of accident prevention, the

insurance companies were asked to give the percentage of earned premiums they had spent on accident prevention for the last five years. The four mutual companies which answered, averaged as a group an expenditure of 3.32% of their earned premiums, one of them having spent 4.59% since 1921. Some stock companies included in their calculations their contributions to rating boards and bureaus, and these averaged 3.17%, while others which specifically excluded these expenses averaged 2.18%. The greater number of stock companies, which did not specify, averaged 2.23%. Since these companies vary widely both in the size of their general insurance business and in the amount of workmen's compensation insurance they write, the figures should not be taken too literally. It is significant, however, that the companies doing the greatest amount of business spend the highest percentages of earned premiums on accident prevention.

In outlining its safety policy one of the largest stock companies said that safety education made up 75% of its accident prevention work. Judging by the manner in which the other big and progressive companies have organized their educational programs this would seem to be generally true. As a beginning, safety education must be sold to the employer, the superintendents and the workmen, says one company. A number of companies state that they suggest a safety organization appropriate to a plant's size and get it started. Many insurance companies keep these organizations supplied with material for meetings and send speakers for general factory safety rallies. Posters, placards for every dangerous spot in the factory, monthly bulletins appropriate to each type of plant and pay envelope inserts are distributed by practically all of the companies. One gives out 500,000 pieces of educational data a year in New York State alone, and a few companies, principally mutuals, supply motion pictures and lantern slides. In addition, a limited number of companies carry on more general safety education, giving community safety entertainments and supplying speakers for Kiwanis, Rotary and other fraternal clubs. The fundamental preventive work done by the stock companies was outlined in one answer as follows: (1) a field secretary of the National Safety Council to organize local Safety Councils for

228 WORKMEN'S COMPENSATION IN NEW YORK

three years; (2) educational safety work manual, magazines; (3) three graduate fellows being supported to study methods of teaching safety; (4) financing of the benzol poisoning investigation; (5) through the American Engineering Standards Committee taking a leading part in formulating forty odd safety codes.

The other side of safety work is more obviously practical and direct in its results. All the companies make inspections of the plants they insure, some at more frequent intervals than others, depending on whether the company itself is active and also on the type of risk it is carrying. A preliminary inspection is invariably made when the risk is taken over. At this time suggestions are given for remedying not only the methods of work and the machines, but also to lessen hazards on stairways and elevators, and for increasing the safety of the grounds. One company writes a thorough survey after the preliminary inspection. Later inspections are then made to check up on improvements already made and to suggest additional safety devices. Half of the companies which sent their replies to the Board make weekly inspections, and some daily, for subway construction risks. Fifty per cent of the companies make a thorough research of accidents, and in order to prevent their repetition, outline their causes and make periodical analyses with charts and curves to bring home to the officials their status in regard to accident frequency.

A more intimate picture of safety progress may be obtained from the employers of the state since they are in a position to note any actual results accomplished. A complaint from a limited number of employers is that carelessness is increasing and that their men do not use the safety devices which have been installed or given them. A few employers believe that the decreased waiting period has tended to increase carelessness; others believe that it is bred by the liberality of the law. A number of employers do not seem to believe that carelessness has resulted on the part of the men from a conscious realization that they are protected, but evidently consider it a form of heedlessness. "We cannot get our men to use goggles," one manufacturer writes, and others declare their greatest problem is safety work, teaching

men how and why precautions are necessary. One workman is quoted as saying that he did not believe the foreman meant what he said when he warned him as to the proper use of a saw. Some employers who are paying for men who were injured after being repeatedly warned against some practice feel that those employees should be penalized for their failure to use safety devices or for performing work in a way forbidden them. Another complaint is that employers cannot get men to report minor injuries immediately or at all and that some neglect to care properly for minor injuries or do not follow the doctor's advice.

In connection with the attitude of employees toward safety measures, their attitude toward the compensation law and its administration in general may be considered, since there is quite likely some relation between the two. Calculating roughly, about seventy per cent of the employers who answered the question dealing with the attitude of their employees to the compensation law consider their employees either generally satisfied, satisfied, or entirely satisfied. The largest number, or sixty per cent of the group, think that their employees are satisfied without qualifications, twenty-four per cent consider that they are only generally satisfied, while the remaining sixteen per cent feel that their men are entirely satisfied with the law. Included among these employees, whose attitude toward the law is considered favorable, is a very small number who are reported by their employers to have changed their attitude in favor of the law since the reduction of the waiting period. There is an intermediate group, amounting to six per cent of all the employers answering the question, who think that their employees have no criticisms or complaints against the law. The remaining twenty-four per cent make up a miscellaneous group; some of them consider their employees indifferent, and others believe them to be "out for what they can get." At least eleven employers find that their employees as a group are divided in sentiment, one part being favorable to the law and the other part unfavorable.

Some observations made by employers bring out certain special aspects of the compensation problem. Two employers find that their employees are anxious to get as much

230 WORKMEN'S COMPENSATION IN NEW YORK

compensation as possible, because they believe that insurance companies bear the expense and that the numbers and amounts of the claims do not reflect on the employer. This misunderstanding of the working of insurance is met again in the discussion of the medical aspect of compensation. One manufacturer observes an increasing tendency on the part of employees to take up technical points; another that his employees think that political pressure will aid them in securing liberal awards. In firms where some policy of benefit has always been in effect, it is observed that the compensation law means nothing to the employees and that the personal touch between the employer and his employees remains as it was before the passage of the law.

INSURANCE

It is provided in Section 50 of the New York workmen's compensation law that an employer must secure the payment of compensation to his employees: by insurance in a stock company, in a mutual company, in the state fund or through self-insurance. Each form of insurance has its advocates who stress certain advantages. The leading arguments for stock companies might be summarized as coordinated insurance service. Mutuals urge their advantages in a selection of risks, a voice in the management and, through dividends, insurance at actual cost. The state fund can offer lower rates than private carriers and claims superior service to injured employees. Self-insurance necessarily restricts a company's payments to actual incurred losses.

Private insurance claims the credit for the origin and progressive development of safety and accident prevention work. All the great advances in insurance, safety work, collection of statistics, etc. have been pioneered by the stock companies, according to one carrier. Other advantages of private insurance companies consist in their being able to appeal cases where the state fund can not and in their ability to give a broader service to employees who may be hired outside the state or whose work may take them into states other than where the principal operations are conducted. Furthermore it is pointed out that through the agency system an employer can have different types of

insurance handled simultaneously and thus be relieved of bother and that the agent, as an integral part of private insurance, is in a position to be of great service to the employer and to the injured employee. Being on the ground he can handle a case from the start, relieve the employer of trouble, see that the employee gets proper attention and expedite settlement through his knowledge of the machinery of administration.

The second group of advantages offered by private insurance companies, according to their own spokesmen, is the superior kind of service which they offer in every line. This is made possible by a highly trained personnel which does not change frequently. Private companies declare that they are more prompt in payment of claims and that they handle claims with a more just appreciation of the needs of the injured men and the rights of employers. Some of them also point out that they maintain excellent medical service and rehabilitation departments, while others claim that their advice is based on wide experience and consequently makes for the perfection of scientific insurance. One company writes that the efforts of a private company to reduce rates are greater than the efforts of the state fund and that this is shown by comparing the number of limited, checking and interim survey applications requested by private companies with the negligible number made by the state insurance fund. However, the most important service rendered by the private carrier is accident prevention, and here the companies feel assured that in every step of the way they have made the initial move, and that they have done and are doing the best preventive work.

Something of the experience of employers with the various forms of workmen's compensation insurance available to them under the New York law is indicated by the relative popularity of the various types. Of the 468 companies throughout the state, which replied to the Conference Board's questionnaire on workmen's compensation, 227, or slightly less than half, had made no change from their original form of insurance. Of these companies, 35% were insured by stock companies, 52% by mutuals, 8% by the state fund and 5% were self-insured.

232 WORKMEN'S COMPENSATION IN NEW YORK

The reasons given by companies which had always insured with the stock companies for their preference of this form of insurance reflect the service which those carriers specialize upon. Such comments as "safer and less bother," "broadest form of coverage," "inspection service superior" lead to the conclusion expressed by the statement, "Rather pay a higher premium than attend to details." Companies which have always insured with mutuals, find this form of insurance "cheaper because of dividends, with lowest net cost after considering preventive and curative service." "A voice in management and a return of savings effected" is a reason cited by one company. Continuous insurance in the state fund is due, in one case at least, to the belief that "since the state is regulating the insurance, it may as well handle the insurance." Those who have been self-insured throughout find that this form is "most economical, obtains best results, brings direct contact with employees, promotes greater activity for accident prevention."

A little over half of the companies represented in the Conference Board's survey have made at least one change in their form of insurance. Where more than one change has been made, the latest is taken as representing their present conviction. A distinct trend toward mutual companies is evidenced by the fact that 51% of the changes reported were to his form of insurance. The fund was second, with 21%, while 18% changed to self-insurance and 10% to stock companies. Of the wage earners affected by these changes, 44% were employed by the companies which became self-insurers; 36% by those changing to mutual companies; 11% by the companies which became insured by stock companies and 9% by those changing to the state fund.

At present 52% of the companies which reported to the Board are insured with mutual companies, 22% with stock companies, 14% with the state fund and 12% are self-insurers. The average employment of the companies under the various forms of insurance is illuminating. The highest average is found among the self-insurers, because, as a rule, only the larger companies find this form of insurance advantageous. The average employment among reporting companies which are self-insured was 1,460; companies

insured with mutual companies averaged 288; with stock companies, 269; and with state fund, 180. The total number of employees covered by the various forms of insurance was divided as follows: 42.3%, self-insurance; 36.7%, mutual companies; 14.7%, stock companies, and 6.3%, state fund.

The reasons given for changing to or from the various forms of insurance cover a wide range. Lower premium rates are, of course, a constantly recurring reason, but at times this has been subordinated because of other factors. Changes have been made to mutual companies because it was thought that they carried better risks and because "the liberal allowance of the law made a dividend company necessary" and also because there was "no opportunity for political interference." On the other hand, the fear of possible additional assessment has caused some to leave mutuals. Companies have changed to the state fund, "because backed by the State (it) has greater financial ability to handle a catastrophe." Some companies selected the state fund because it was "least expensive, selected because of stability, cooperation and service rendered." Another company found a feeling on the part of workers that their interests were better served by insurance in the state fund. On the other hand, some "dislike the (notice) clause in State Fund when considering a change," or find elsewhere "better medical service than in State Fund." Changes to stock companies have been due to expectation of "better welfare service," or because this form is thought to provide "best service in prevention of accidents, most equable treatment in matter of costs." Those leaving stock companies have usually done so to obtain lower rates. The companies which have become self-insurers stress the closer contact with their employees which this form of insurance encourages.

The summary given above is based on the replies to the Conference Board's questionnaire and should represent a fair cross-section of opinion. The companies represented average larger than the actual average establishment in the state, since it is invariably the larger plants which are most willing to submit data concerning their operations. The reasons for insuring under the various forms of insurance have been cited without any attempt to argue their validity, since they

represent the opinions which apparently have governed the selection of insurance carriers.

Experience with Self-insurance

Since there has been a growing tendency on the part of New York employers to avail themselves of the provision in the workmen's compensation law permitting self-insurance, it has seemed advisable to learn something of the experience with this form of insurance. Any employer may become a self-insurer, as the law reads, "by furnishing satisfactory proof to the commissioner of his financial ability to pay such compensation for himself, in which case the commissioner may, in his discretion, require the deposit with the commissioner . . . in an amount to be determined by the commissioner to secure his liability to pay the compensation provided in this chapter." Self-insurance offers the advantage to companies with a favorable accident experience of keeping their compensation costs low, confined to their own actual losses. On the other hand, it does not give protection against losses which may reach catastrophe dimensions. Consequently, it is a frequent practice among self-insurers to reinsure against losses aggregating higher than a fixed amount in any one year.

Forty-eight companies which are self-insurers provided the Conference Board with data relating to their methods. The total book value of securities deposited with the commissioner amounted to a total, for the 48 companies, of \$1,632,927. The amounts deposited by individual companies varied from under \$5,000 to over \$100,000, the average for all companies being \$34,019. Such an average is, of course, dependent upon the size and general financial standing of the companies which reported. To obtain a more significant average, the total value of securities was divided by the number of wage earners employed by the combined companies to ascertain the average value of securities deposited per wage earner employed. This figure was found to be \$27.50. It is of interest to compare this figure with \$20.11, which was found to be the average compensation cost per wage earner in 1925 of the companies, other than self-insurers, which provided data for the survey. The fact that 48 com-

panies have segregated assets amounting to \$1,632,927 gives some indication of the volume of capital which has been withdrawn for this purpose from productive uses.

Liability for compensation in a single case frequently extends over a number of years. Some provision must be made, therefore, for meeting these payments as they fall due. Thirty companies explained their methods of providing for these future payments. Four companies have not had a sufficiently serious case to require any provision for long-time payments. Others established some form of reserve fund, which was set up as a liability, to take care of anticipated payments. The most common procedure was to set aside an amount sufficient to cover all outstanding claims. Other methods included the establishment of a reserve equivalent to one year's adjusted premium, or a reserve to which a fixed percentage of the weekly payroll is contributed, while in other cases an arbitrary amount was determined upon.

The presumption has been that in compensation matters self-insurers deal directly with their injured employees. An advantage of self-insurance frequently cited is the close and cordial relations induced by this more intimate handling of compensation cases. Yet certain service organizations have come into being which relieve the self-insurer of all direct dealings in compensation cases and thus inject the third party element. It was found in the case of the 48 self-insurers who furnished data for this study that 31 handled all compensation matters themselves, while 17 turned over the conduct of these matters to some form of service bureau. This would indicate that by no means all self-insurers conduct their compensation dealings directly with the injured employee and the Industrial Board.

CHAPTER VI

THE COST OF WORKMEN'S COMPENSATION IN NEW YORK STATE

THE statement has frequently been made that workmen's compensation is more costly to the employer in New York than in any other states and that the tendency has been, and still is, for it to become constantly more costly. It is the purpose of this chapter to inquire into the matter of actual costs at the present time, to determine what has been their trend in recent years, and to compare the burden which the cost of compensation imposes upon the employer in New York State with the cost to employers in other states, particularly in the leading industrial states from which he must expect his most active competition. Since the basis of compensation costs to the employer is the premium rate, except in the case of self-insurers, compensation insurance rates will first be considered.

INSURANCE PREMIUM RATES

Table 35, prepared by the National Council on Compensation Insurance, shows the evolution of manual rates in New York since 1914. The changes which have been made in the general rate level are shown in the aggregate and by the component parts of the rate, law amendments, expense loading and other elements. The per cent of change is based on the rates in effect at the time changes were made, so that in order to ascertain the cumulative effect since 1914, the changes as given must be multiplied together in turn, taking the 1914 rate level as 100%. Likewise, the per cent of change given for each of the several elements is based on the rate after the change for each preceding element has been included.

The total change for the whole period since 1914 has been

TABLE 35: CHANGES IN MANUAL RATES AND RATE LEVEL SINCE 1914, NEW YORK STATE

(Source: National Council on Compensation Insurance)

Date of Change	Reason for Change	(1) Amount of Change	(2) (3) Number of Classifications With Changed Rates		(4) Per Cent of Payroll Affected	(5) Per Cent of Premium Affected	(6) Increased Cost Made Necessary by Law Amend- ments Since Last Rate Revision	(7) Expense Loading	(8) Increase in Rates Caused by Changed Expense Loading	(9) Change Due to Elements Other Than Changes in Law and Expense Loading
			Increases	Decreases						
July 1, 1914....	Inception date of New York Law	..	..	..	..	..	..	33½%	..	..
March 31, 1917..	1917 rate revision	+20.0%	1	1	1	1	..	39.0	9.3%	+9.8%
January 1, 1918..	Abnormal expense factor because of increase in expenses resulting from war-time conditions	+5.0	all	..	100	100	..	8	5.0 ^a	..
June 30, 1920....	1920 rate revision.....	+5.2	335 ^b	365 ^b	substan- tially all	substan- tially all	17.6%	39.0	-4.8 ^c	-6.1
March 31, 1923..	1923 rate revision	-3.2	68	134	43	25	1.4	"	..	-4.5
June 30, 1923....	New experience rating plan became effective	-5.0	..	all	100	100	..	"	..	-5.0
July 1, 1924....	Law amendment	+3.2	all	..	100	100	3.2	"	..	..
January 1, 1925..	1924-5 revision	+7.0	412	276	substan- tially all ^d	substan- tially all ^d	5.7	40.0	1.7%	-0.5
June 30, 1925....	To meet emergency cre- ated by adverse loss ratios	+10.0	all	..	100	100	..	"	..	+10.0
June 30, 1926....	1926 rate revision	0.0	311	323	96	96	..	"	..	..
	Total....	+48.2	..	..	..	..	+30.1	..	+11.2	+2.4

¹ Information not available.

² Based on an investigation covering 703 manual classifications, involving over 88% of the payroll exposure.

³ 5% surcharge removed.

⁴ 99.97% of payroll and 99.85% of premium affected.

⁵ 5% surcharge from January 1, 1918 to June 30, 1920 for abnormal expenses resulting from war. Amounts to expense loading of 41.9%.

238 WORKMEN'S COMPENSATION IN NEW YORK

over 48%. This includes changes made through five rate revisions when all elements which affect cost are considered, as measured by the accident experience of previous years. These revisions automatically provide for increased costs on account of law amendments which could not be accurately measured at the time, such as the effect of costs in disfigurement cases. It will be observed that two reductions in rates were made in 1923, the first of these is said to be due to payroll increases and the second was the result of the introduction of the new experience rating plan.

The increase due to amendments of the law since 1917 was 30.1%, and that due to causes other than amendments to the law and expense loading, 2.4%. The influence of rising payrolls is seen in the latter increase. It will be noted in column 9 that in four instances decreases were caused by elements other than amendments and expense loading. Since premiums are the product of payrolls and the rates, if all other conditions remain the same, the rates will decrease as the payrolls increase. While it is true that employees will receive a larger amount of compensation as payrolls increase, because of the higher wage rates, this does not entirely offset the effect of payrolls on rates. The 10.0% increase on June 30, 1925 was due to the increased losses experienced by insurance carriers.

Table 36 shows a record of the manual rates in effect in New York for the more important classifications since July 1, 1914. The relative importance of each classification is indicated in terms of the per cent which the payrolls and premiums reported for that classification in New York Schedule "Z" for the policy year 1923 are of the total New York payrolls and premiums for all classifications combined for the same period. The extent to which the present New York rate is based solely on New York experience is indicated in percentages for serious and non-serious injuries and for the medical item. To the extent that a rate is not based on New York experience it is based on the combined experience of all states, so that New York experience enters into the rate determination for those rates which are not based entirely on New York experience as a component part of nation-wide experience.

The classifications shown account for 62.8% of the total payroll and 43.8% of the total premiums earned for policy year 1923. It will be noted that, while rates in many cases have increased greatly over those initially in effect, in some cases the differences are not so marked, while in others the rates have actually declined. The explanation for this lies in the fact that, in the beginning, rates were in some cases set too high and that accident costs in individual classifications vary according to accident frequency and severity. It is agreed that the largest influence on rates has been the great increase in payrolls over the 1914 period. If wage levels had remained stationary, all the rates would have been very much higher than shown.

The relative hazard of the various occupations listed as determined by accident experience is well illustrated by the last column showing rates which became effective on June 30, 1926. Iron and steel erection is far in the lead as the most hazardous occupation, a rate of \$27.45 being considered necessary to cover losses. In other words, the employer must pay an amount equal to more than one quarter of his payroll to obtain compensation insurance. Carpentry ranks second, with a rate of \$18.71, and logging and lumbering is third, with \$17.23. Blast furnaces lead the manufacturing occupations, with a rate of \$8.68.

That the trend of compensation rates has been quite consistently and steadily upward is well established by Table 36. This steady increase has caused considerable dissatisfaction among employers as may be seen from the accounts of their experience with workmen's compensation. Many of them probably do not understand the reasons behind rate increases or the actuarial formulæ for determining their amount. Frequently the employer has felt that his industry was not properly classified, that the rates were too high for the hazards involved and that the safeguards and hospital units which he had installed had not been duly discounted. In fact, one company found that instead of reducing the yearly premium, the credit allowed for a hospital unit was taken away by reducing the experience credit and thereby increasing the adjusted rate. Some employers feel that their safety records have not been sufficiently taken into account. One of the

240 WORKMEN'S COMPENSATION IN NEW YORK

TABLE 36: MANUAL RATES IN EFFECT IN NEW YORK DURING
IMPORTANT NEW

(Source: National Council

Code	Classification	Volume of Payroll for Classification for New York (in Terms of Per Cent of Total New York Payroll)	Volume of Premiums for Classification for New York (in Terms of Per Cent of Total New York Premiums)	Extent to Which Present New York Rate is Based Entirely Upon New York Experience		
				Serious %	Non-Serious %	Medical %
	Contracting Classifications	%	%			
5022	Masonry (N.O.C.) ¹	0.30	2.39	100	100	100
5040	Iron and Steel Erection	0.04	0.60	100	100	100
5183	Plumbing (N.O.C.)	1.04	1.96	100	100	100
5190	Electrical Fixtures—installation	0.45	0.64	100	100	100
5204	Concrete Construction—buildings	0.27	1.39	100	100	100
5401	Carpentry (N.O.C.)	0.09	0.73	100	100	100
5437	Carpentry—Interior Trim.	0.43	0.77	100	100	100
5480	Plastering (N.O.C.)	0.33	1.11	100	100	100
5490	Painting and Decorating—Interior	0.44	0.87	100	100	100
5502	Concrete Construction—Sidewalks and Floors	0.22	0.42	100	100	100
6041	Grading Land	0.18	0.28	100	100	100
6082	Street or Road Construction	0.49	1.20	100	100	100
	Manufacturing Classifications					
1421	Blast Furnaces	0.04	0.17	50	50	50
1701	Cement Manufacturing	0.07	0.14	50	25	25
1803	Stone Cutting and Polishing	0.23	0.41	100	100	100
2000	Bakeries	0.65	1.05	100	100	100
2014	Milling of Grain	0.09	0.18	100	100	100
2021	Sugar Refining	0.15	0.28	100	100	100
2040	Ice Cream Manufacturing	0.09	0.16	75	100	100
2041	Confectionery Manufacturing	0.33	0.40	100	100	100
2042	Chocolate Manufacturing	0.04	0.06	100	100	100
2065	Milk Products Manufacturing	0.10	0.15	75	100	75
2081	Butchering	0.07	0.21	50	100	100
2150	Ice Manufacturing	0.09	0.26	100	100	100
2220	Yarn or Thread Manufacturing—cotton	0.13	0.13	100	100	100
2222	Cotton Spinning and Weaving	0.14	0.10	100	100	100
2286	Wool Spinning and Weaving	0.25	0.15	100	100	100
2303	Silk Throwing and Weaving	0.28	0.10	25	100	75
2362	Knit Goods Manufacturing	0.86	0.50	75	100	100
2388	Embroidery Manufacturing	0.13	0.05	25	100	50
2501	Clothing Manufacturing	6.78	1.59	100	100	100
2553	Furnishing Goods Manufacturing ¹	1.73	0.43	100	100	100
2521	Shirt Manufacturing	0.39	0.11	25	100	100
2532	Millinery Manufacturing	0.64	0.14	100	100	100
2580	Laundries—Wet Wash ²	0.04	0.12	..	..	..
2581	Laundries (N.O.C.)	0.43	0.49	100	100	100
2623	Tanning	0.12	0.24	100	100	100
2660	Boot and Shoe Manufacturing	1.01	0.61	100	100	100
2688	Leather Goods Manufacturing (N.O.C.)	0.26	0.15	50	100	100
2730	Sash, Door and Assembled Mill Work	0.13	0.40	100	100	100
2731	Planing and Moulding Mill	0.17	0.50	100	100	100
2883	Furniture Manufacturing ³	0.59	0.95	100	100	100

¹ "N.O.C." is an abbreviation of the words "Not Otherwise Classified."² Classification No. 2553.—Since October 1, 1926, Furnishing Goods Manufacturing has been written under code number 2501.³ Classification No. 2580—Laundries, Wet Wash, has been discontinued. Operations formerly written under this classification are now written under No. 2581—Laundries (N.O.C.).

COST OF COMPENSATION

241

THE PERIOD FROM JULY 1, 1914, TO DATE, FOR EACH OF THE
YORK CLASSIFICATIONS
on Compensation Insurance)

Rate Effective Between												
July 1, 1914 and June 30, 1916	June 30, 1916 and March 31, 1917	March 31, 1917 and January 1, 1918	January 1, 1918 and June 30, 1920	June 30, 1920 and March 31, 1923	March 31, 1923 and June 30, 1923	June 30, 1923 and July 1, 1924	July 1, 1924 and January 1, 1925	January 1, 1925 and June 30, 1925	June 30, 1925 and June 30, 1926	Since June 30, 1926		
6.16	6.16	8.32	8.74	8.73	7.57	7.19	7.42	6.91	7.59	7.33		
13.77	13.77	19.96	20.96	28.99	22.79	21.66	22.35	25.83	28.41	27.45		
1.30	1.30	1.85	1.94	2.77	2.49	2.37	2.45	2.26	2.49	2.34		
1.30	1.30	1.93	2.03	1.96	1.96	1.87	1.93	1.61	1.77	1.88		
8.10	8.10	8.32	8.74	7.88	7.07	6.72	6.94	7.92	8.70	8.45		
4.28	5.02	8.73	9.17	12.16	12.16	11.56	11.99	15.36	16.90	18.71		
1.30	1.30	1.53	1.51	2.65	2.51	2.59	2.38	2.63	2.46	2.46		
2.27	2.27	3.32	3.49	4.93	4.93	4.68	4.83	4.28	4.70	4.71		
1.30	1.30	2.75	2.89	3.21	2.62	2.49	2.57	2.71	2.98	2.98		
2.40	2.40	2.42	3.82	2.59	2.59	2.46	2.54	3.48	3.83	2.91		
3.24	3.24	5.03	3.18	2.52	1.98	1.88	1.94	2.33	2.55	3.19		
2.92	2.92	4.17	3.82	3.60	3.20	3.04	3.14	4.97	5.46	5.56		
7.45	7.45	9.99	10.49	12.69	12.69	12.06	12.45	7.65	8.43	8.68		
4.86	6.48	5.51	5.79	4.11	4.11	3.90	4.02	6.12	6.73	5.74		
1.78	1.78	3.15	3.31	2.57	2.57	2.44	2.52	2.82	3.10	2.59		
1.72	1.72	1.61	1.69	2.18	2.18	2.07	2.14	1.84	2.02	1.98		
2.59	2.59	3.15	3.31	2.91	2.91	2.77	2.86	2.56	2.81	3.11		
.97	1.81	3.15	3.31	2.11	2.11	2.00	2.06	2.37	2.61	2.61		
1.72	1.72	3.48	2.11	2.30	2.30	2.19	2.26	3.01	3.32	3.29		
1.46	1.46	1.20	1.26	1.66	1.66	1.58	1.63	1.84	2.02	1.84		
.81	.81	1.20	1.26	1.66	1.66	1.58	1.63	1.84	2.02	1.84		
1.13	1.13	1.85	1.94	2.22	2.22	2.11	2.18	2.86	3.15	2.93		
4.80	4.86	6.04	6.34	4.64	4.31	4.09	4.22	3.72	4.09	4.28		
4.86	4.86	4.58	4.81	4.37	4.37	4.16	4.29	4.45	4.89	4.44		
.78	.78	1.28	1.34	1.48	1.48	1.41	1.46	1.54	1.69	1.83		
.78	.78	1.28	1.34	.98	1.33	1.26	1.30	1.27	1.39	1.44		
.78	.78	1.12	1.18	1.05	.91	.87	.90	.91	1.00	1.01		
.29	.29	.43	.45	.54	.54	.52	.54	.44	.49	.49		
.65	.65	.55	.58	.73	.92	.88	.91	.63	.70	.69		
.36	.36	.43	.45	.36	.36	.33	.33	.42	.47	.48		
.36	.36	.39	.41	.39	.32	.31	.32	.27	.29	.31		
.36	.36	.39	.41	.39	.30	.31	.32	.39	.29	.31		
.31	.36	.39	.41	.39	.39	.37	.38	.42	.46	.44		
.36	.36	.47	.49	.33	.27	.26	.27	.31	.34	.31		
1.94	2.40	3.32	3.49	4.51	4.51	4.28	4.42	6.17	6.80	2.26		
1.63	1.63	1.85	1.94	1.76	1.37	1.49	1.54	1.63	1.80	2.25		
1.30	1.30	2.01	2.11	2.04	2.04	1.94	2.00	2.04	2.25	2.51		
.39	.39	.39	.66	1.08	.96	.91	.94	.86	.95	.88		
.65	.65	.63	.66	.96	.79	.75	.77	.75	.82	.79		
3.43	2.75	3.81	4.00	4.24	4.55	4.33	4.47	4.55	5.01	4.44		
3.43	2.75	3.81	4.00	4.24	4.55	4.33	4.47	4.55	5.01	4.44		
1.52	1.52	2.22	2.33	2.26	2.37	2.44	2.52	2.57	2.83	2.66		

* Classification No. 2883—Furniture Manufacturing, was apparently not erected until June 30, 1916. Prior to that date the manufacturing of parts was apparently written under one classification, and the assembling and finishing operations under another. Consequently, we are unable to show a rate prior to June 30, 1916.

242 WORKMEN'S COMPENSATION IN NEW YORK

**TABLE 36: MANUAL RATES IN EFFECT IN NEW YORK DURING
IMPORTANT NEW YORK
(Source: National Council**

Code	Classification	Volume of Payroll for Classification for New York (in Terms of Per Cent of Total New York Payroll)	Volume of Premiums for Classification for New York (in Terms of Per Cent of Total New York Premiums)	Extent to Which Rate is Based Entirely Upon New York Experience		
				Serious %	Non-Serious %	Medical %
Manufacturing Classifications						
2923	Piano Manufacturing	0.17	0.17	100	100	100
3002	Steel Works—Open Hearth or Bessemer	0.26	0.74	100	100	100
3081	Foundries—iron	0.39	0.65	100	100	100
3146	Hardware Manufacturing	0.21	0.31	50	100	100
3180	Electric or Gas Fixtures Manufacturing	0.17	0.18	100	100	100
3183	Jewelry Manufacturing	0.29	0.12	0	100	100
3400	Metal Goods Manufacturing (N.O.C.)	0.12	0.37	100	100	100
3548	Printing or Bookbinding Mach. Manufacturing	0.17	0.23	100	100	100
3631	Machine Shops—with foundry*					
3632	Machine Shops—excluding foundries	0.71	1.25	100	100	100
3634	Valve Manufacturing	0.20	0.19	100	100	100
3643	Electric apparatus Manufacturing	0.25	0.31	100	100	100
3808	Automobile Manufacturing	0.43	0.44	100	100	100
3811	Automobile Body Manufacturing	0.07	0.12	100	100	100
4029	Brick Manufacturing (N.O.C.)	0.20	0.45	100	100	100
4240	Box Manufacturing—solid paper	0.28	0.39	100	100	100
4299	Printing and Lithographing	0.77	0.45	100	100	100
4300	Printing ¹	1.00	0.66	..	..	..
4302	Lithographing ¹	0.08	0.08	..	..	..
4304	Newspaper Publishing	0.75	0.38	100	100	100
4307	Bookbinding	0.59	0.28	100	100	100
4410	Rubber Goods Manufacturing (N.O.C.)	0.07	0.11	100	100	100
4703	Corn Products Manufacturing	0.02	0.03	0	0	0
Miscellaneous Classifications						
0004	Florists	0.07	0.05	0	25	25
0006	Farm Labor	0.28	0.39	100	100	100
2702	Logging and Lumbering	0.06	0.52	100	100	100
7205	Drivers and Their Helpers	0.65	1.37	100	100	100
7219	Truckmen (N.O.C.)	0.32	1.54	100	100	100
7800	Chauffeurs and Their Helpers	1.55	2.63	100	100	100
8300	Department Stores	0.92	0.30	100	100	100
8006	Grocery Stores—retail	0.48	0.22	100	100	100
8008	Clothing Stores—retail	1.28	0.26	50	100	100
8380	Automobile Dealers	1.46	1.79	100	100	100
8742	Salesmen, Collectors and Messengers	6.43	0.65	100	100	100
8810	Clerical Office Employees	18.02	0.95	100	100	100
9040	Asylums or Hospitals	0.33	0.26	100	100	100
9050	Hotels	1.05	0.92	100	100	100
9071	Restaurants	1.64	0.89	100	100	100
9150	Theatres—stage hands	0.27	0.25	100	100	100
9154	Theatres—managers	0.36	0.09	25	50	25

* Symbol "(s)" denotes that rate for each individual risk is determined by Rating Board.

¹ Classification No. 3631—Machine Shops, with foundry, has been discontinued. Payrolls formerly written under that classification are now divided between the "Machine Shops—excluding foundry" and "Foundry" classifications.

COST OF COMPENSATION

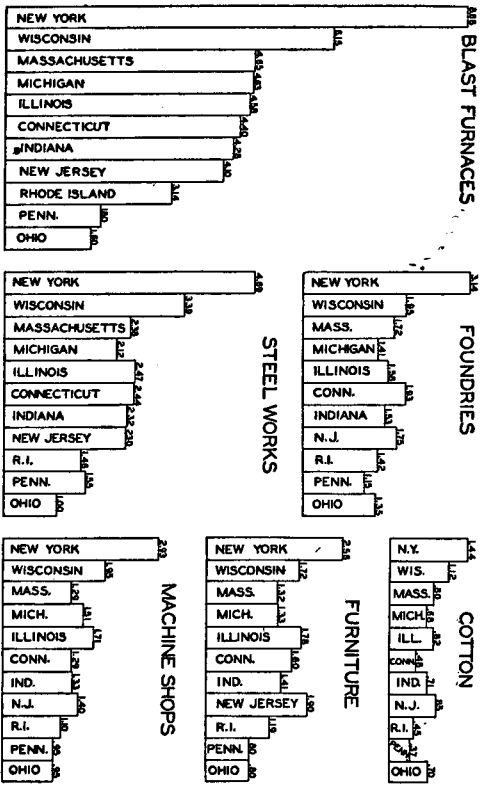
243

THE PERIOD FROM JULY 1, 1914, TO DATE, FOR EACH OF THE CLASSIFICATIONS—(Continued)
on Compensation Insurance)

Rate Effective Between										Since June 30, 1926
July 1, 1914 and June 30, 1916	June 30, 1916 and March 31, 1917	March 31, 1917 and January 1, 1918	January 1, 1918 and June 30, 1920	June 30, 1920 and March 31, 1923	March 31, 1923 and June 30, 1923	June 30, 1923 and July 1, 1924	July 1, 1924 and January 1, 1925	January 1, 1925 and June 30, 1925	June 30, 1925 and June 30, 1926	
.68	.68	1.28	1.34	1.32	1.54	1.46	1.51	1.49	1.64	1.63
5.12	5.12	5.51	5.79	5.20	5.20	4.94	5.10	5.89	4.29	4.69
2.72	2.72	2.42	2.54	2.83	2.63	2.50	2.79	3.07	2.79	1.14
.97	.97	1.44	1.51	2.06	2.06	1.96	2.02	2.28	2.51	2.59
1.13	1.13	1.12	.80	1.44	1.44	1.37	1.41	1.66	1.84	1.84
.65	.65	.67	.70	.66	.56	.53	.55	.50	.65	.51
5.67	5.67	5.32	(a) ¹	4.97	4.97	4.73	4.88	5.12	3.64	5.86
.87	.87	1.12	1.18	2.22	2.22	2.11	2.18	1.41	1.56	1.98
2.07	2.07	2.42	2.54							
1.36	1.36	2.10	2.21	2.70	2.70	2.56	2.64	2.63	2.89	2.93
.97	.97	1.12	1.18	1.88	1.88	1.79	1.85	1.57	1.73	1.78
1.13	1.13	1.61	1.69	1.97	1.97	1.87	1.93	2.00	2.20	2.01
1.10	1.10	1.69	1.77	1.55	1.43	1.36	1.40	1.80	1.77	1.89
2.01	1.33	1.53	1.61	1.42	2.51	2.39	2.47	2.44	2.69	2.74
2.43	2.43	2.91	3.06	3.49	3.06	2.91	3.00	3.16	3.48	3.84
2.49	2.49	2.10	2.21	2.48	2.48	2.36	2.44	1.84	2.02	1.91
.97	.97	.96	1.01	.96	.96	.91	.94	.94	1.04	.98
.97	.97	.96	1.01	1.75	1.62	1.54	1.59	..	..	..
.65	.65	.71	.75	.74	.79	.75	.77	.94	1.04	.98
.49	.49	.47	.49	.82	.82	.78	.80	.71	.77	.79
1.94	1.94	2.01	2.11	3.15	2.34	2.22	2.29	2.17	2.39	2.94
5.99	3.30	3.32	3.49	3.66	3.66	3.48	3.59	3.68	4.04	4.33
1.07	1.07	.79	.83	.90	.90	.86	.89	.96	1.06	1.06
1.81	1.81	1.86	1.86	1.89	1.89	1.80	1.86	2.10	2.31	2.49
5.18	5.18	9.14	9.60	12.20	12.20	11.59	11.96	14.79	16.27	17.23
2.20	2.20	2.30	2.63	3.28	2.95	2.81	2.90	3.19	3.50	3.59
2.75	2.75	4.37	4.59	7.70	6.47	6.15	6.35	6.82	7.51	8.21
2.43	2.43	2.10	2.21	2.25	2.25	2.14	2.21	2.28	2.50	2.48
..	.49	.55	.58	.51	.51	.49	.51	.63	.68	.64
..	.49	.63	.66	.69	.59	.56	.58	.76	.83	.79
..	.19	.26	.27	.28	.24	.25	.29	.32	.32	.31
1.36	1.10	1.40	1.47	1.70	1.70	1.62	1.67	1.99	2.19	2.19
.16	.16	.22	.23	.17	.13	.12	.12	.15	.17	.16
.10	.10	.10	.10	.07	.07	.07	.07	.07	.07	.06
..	.71	.83	.87	1.16	1.16	1.10	1.14	1.35	1.49	1.41
.60	.71	.83	.87	1.02	1.28	1.22	1.26	1.36	1.49	1.41
..	.81	.71	.75	.58	.76	.72	.74	.93	1.02	1.04
1.62	1.62	1.44	1.51	1.57	1.21	1.15	1.19	.95	*1.05	.94
..	.29	.26	.27	.33	.33	.32	.33	.33	.36	.31

¹ Classifications No. 4300—Printing, and No. 4302 Lithographing, have been combined to form No. 4299—Printing and Lithographing.

CHART 8: MANUAL INSURANCE RATES IN SELECTED STATES, JANUARY 1, 1926



reasons for the high rate on logging and lumbering in New York, according to one corporation, is that only large operators make true reports of payrolls, and yet all accidents are reported and go to make up the manual rate. But most of the complaints against the Rating Board seemed to be due to a feeling that there had not been sufficient investigation into the actual processes of each individual factory and into the risks involved. Because of this lack of care it is alleged that general classifications are made which do not result from a consideration of the peculiar differences in factories. A few employers also complain that the rates which they pay are relatively too high for the benefits which the injured men receive.

COMPENSATION COSTS BY TYPE OF DISABILITY

Compensable disability has been classified in the New York workmen's compensation law into five classes: death, permanent total disability, permanent partial disability, temporary total disability and temporary partial disability. For convenience and to save endless repetition the word "disability" is usually omitted, and the divisions are referred to simply as "permanent partial" or "temporary total." Because of the comparatively few cases of temporary partial disability, it has become the custom to consider all temporary disabilities under one head.

It has already been explained that since 1923 the State Department of Labor has based statistics covering compensation awards upon the year in which awards were closed. Since it has been shown that approximately 97% of the cases tabulated for any one year are for the same year and that immediately preceding, it is permissible to combine data covering costs and cases for any one year in order to indicate the general relationship. The cost of death and permanent disability cases is arrived at by computing the sum of the discounted present values for each case according to tables given in Special Bulletin No. 120 of the New York State Department of Labor which are based upon the survivorship annuitants table of mortality (Danish), the remarriage tables of the Dutch Royal Insurance Institution and interest at the rate of $3\frac{1}{2}\%$ per annum. Since the De-

246 WORKMEN'S COMPENSATION IN NEW YORK

partment of Labor does not receive reports covering medical costs, figures on the costs of various types of injuries are based upon direct benefits to employees or their dependents only.

Table 37 shows the number of compensable cases, the total awards and the average award per case, classified by extent

TABLE 37: DISTRIBUTION OF NUMBER OF COMPENSABLE CASES, TOTAL AMOUNT OF AWARDS AND AVERAGE AWARD PER CASE, JULY 1, 1924 TO JUNE 30, 1926

(Source: New York State Department of Labor)

Compensable Cases, by Extent of Disability

Disability	1923-1924	1924-1925	1925-1926	Total (3 yrs.)	Per Cent of All Cases in Each Class of Disability			
					1923-1924	1924-1925	1925-1926	Total
Death . . .	1,109	1,102	1,110	3,321	1.5	1.5	1.2	1.4
Perm. total	22	50	41	113				
Perm. partial	15,526	16,000	17,327	48,853				
Temporary	56,326	59,064	81,195	196,585	77.2	77.5	81.4	79.0
Total cases	72,983	76,216	99,673	248,872	100.0	100.0	100.0	100.0

Awards, by Extent of Disability

	1923-1924	1924-1925	1925-26	Total (3 yrs.)	Per Cent of Total Awards in Each Class of Disability			
					1923-1924	1924-1925	1925-1926	Average
Death	\$6,448,655	\$6,499,258	\$6,874,881	\$19,822,794	24.3	23.3	23.7	23.8
Perm. Total	301,982	652,981	519,466	1,474,429	1.1	2.4	1.8	1.8
Perm. partial	13,520,153	14,121,288	13,859,140	41,500,581	50.8	50.7	47.8	49.7
Temporary	6,319,314	6,581,199	7,741,989	20,642,502	23.8	23.6	26.7	24.7
Total awards	\$26,590,104	\$27,854,726	\$28,995,476	\$83,440,306	100.0	100.0	100.0	100.0

Average Award per Case

	1923-1924	1924-1925	1925-1926	Average 3 yrs.
Death	\$5,815	\$5,898	\$6,194	\$5,969
Perm. total	13,726	13,060	12,670	13,048
Perm. partial	871	883	800	850
Temporary	112	111	95	105
All cases	\$364	\$365	\$291	\$335

of disability for the fiscal years 1924, 1925 and 1926. This brings out the contrast between the relative frequency and total cost of different types of cases and the average award or cost per case. Thus, permanent totals are by a wide margin the smallest group in number of cases, and the total awards for this group have never equalled 3% of the total for all groups; but the average cost of permanent total cases is more than double the cost of deaths and far in excess of any of the other classifications. Permanent partials contribute only about 20% of the number of compensable cases but account for almost 50% of the total amount of awards. Death cases have been calculated as averaging close to \$6000 for the three year period, and permanent totals are shown as costing over \$13,000 per case. These figures, as explained, are based upon probability tables and represent a probable average. It is possible for the cost of individual death cases to run as high as \$20,000 and more, while in individual permanent total cases where the beneficiary was injured when very young the cost may be several times the average shown.

Temporary disabilities provide approximately 80% of the compensable cases and receive about 25% of the total amount of awards, but of course the individual award is small, having averaged \$105 in the three years covered. It is of interest to note that, while the average awards for the death, permanent total and permanent partial cases remained remarkably constant between 1924 and 1926, the average award for temporary disabilities, after dropping from \$112 in 1924 to \$111 in 1925, declined to \$95 in 1926, or nearly 15%. This was undoubtedly due to the reduction of the waiting period from two weeks to one, with the consequent addition of a considerable number of short time cases.

DEATH CLAIMS AND AWARDS

The number of death claims filed in New York State has averaged approximately 150 per month since October, 1923, the first month for which statistics of these cases were published. During each of the past three fiscal years death cases in which closing awards were made numbered slightly more than 1100, or 92 per month. Out of each eight death cases

248 WORKMEN'S COMPENSATION IN NEW YORK

filed five were compensated, indicating the endeavor of dependents to have deaths through accidents brought under the compensation law.

The cost of these compensated cases has already been shown as averaging close to \$6000 for the three year period. If it were not for the fact that in many cases there are no dependents, the averages for each year would be increased. In 1923-24 the average cost per case with dependents was \$6,800, as against \$5,815 in all death cases. In 1924-25 the respective costs were \$7,345 and \$5,898. The relatively greater cost of cases with dependents was due to the larger number of fatality cases without dependents. In the last fiscal year, 1925-26, the average cost per case with dependents was \$7,413, as compared with the average cost of \$6,194 in all death cases. The maximum cost of cases without dependents cannot be over \$1,200, exclusive of any cost preceding death, since the legal requirements are that \$200 shall be paid for funeral expenses and two sums of \$500 each to the second injury and rehabilitation funds.

The number of fatal cases for the last three fiscal years on the basis of dependency are shown in Table 38.

TABLE 38: CLASSIFICATION OF DEATH CASES IN NEW YORK STATE, BETWEEN JULY 1, 1923 AND JUNE 30, 1926
(Source: New York State Department of Labor)

	1923-24	1924-25	1925-26
Total fatal cases	1,109	1,102	1,110
With dependents	915	844	894
Without "	194	258	216
Total "	2,295	2,031	2,001
Widows	829	670	705
Children	1,298	1,199	1,113
Parents	168	162	183
Average number dependents			
All cases	2.1	1.8	1.8
Cases with dependents	2.7	2.4	2.2

PERMANENT TOTAL DISABILITY CASES

These cases, while few in number as compared with other types of injury, are most important from the point of view of humanitarian considerations as well as from the standpoint of costs. In the case of a young man permanently disabled for life the cost of compensation may ultimately

exceed \$25,000. It is a simple calculation to obtain the exact sum if the maximum rate of \$20 per week is taken for a long period of years. The average cost during the past few years has been close to \$13,000 per case. These costs are based on the survivorship annuitants table of mortality.

The number of permanent total cases tabulated by the Department of Labor since the workmen's compensation law became effective is shown in Table 39. The Table also shows the number of permanent total disability cases and the average cost per case as reported by insurance carriers to the National Council on Compensation Insurance for the fiscal years 1917-18 to 1922-23. No comparison can be made from year to year, since in the period up to 1923 cases were tabulated according to the year in which the accident occurred, and only those cases which were closed at the time of tabulation were included, while from 1923 on, the record shows the number of cases in which final awards were made during any one year without regard to the year in which the accident occurred. These cases therefore include those for the years previous to 1923 which were not tabulated under the year of occurrence. The record for the whole period of twelve years is fairly complete and omits only those cases which occurred before June 30, 1926 and have not as yet been settled. The number of cases reported by insurance

TABLE 39: PERMANENT TOTAL DISABILITIES, BETWEEN
JULY 1, 1914 AND JUNE 30, 1926

(Source: New York State Department of Labor and National Council on Compensation Insurance)

Year	As Reported by Department of Labor	As Reported by Insurance Carriers	
	Number of Cases	Number of Cases	Average Cost per Case
1914-1915.....	26	..	..
1915-1916.....	15	..	..
1916-1917.....	14	..	..
1917-1918.....	41	95	\$11,372
1918-1919.....	26	66	12,920
1919-1920.....	12	60	13,845
1920-1921.....	13	49	14,874
1921-1922.....	16	38	12,427
1922-1923.....	17	65	11,553
1923-1924.....	22	..	..
1924-1925.....	50	..	..
1925-1926.....	41	..	..

250 WORKMEN'S COMPENSATION IN NEW YORK

carriers to the National Council on Compensation Insurance on Schedule "Z" is much higher than that shown by the Department of Labor. This is due to the classification of long time temporary disability cases as permanent total cases.

PERMANENT PARTIAL DISABILITY CASES

Cases of this type do not permit of simple analysis because the severity of individual injuries varies considerably and because the effect of these injuries on the earning capacity of the employee cannot be accurately measured. The special bulletins issued by the Department of Labor on compensation accidents classify this, as well as other types of disability, according to industry, cause, location and nature of the injury, and infection. These injuries compose 21% of the total, and their cost amounts to approximately 50% of all compensation benefits. During the fiscal year 1924-25 the number of weeks for which compensation was awarded in these cases amounted to over 800,000, as compared with 400,000 weeks in temporary cases.

The distribution of 17,327 cases, according to the part of the body injured together with the cost of compensation and length of compensation period, is shown in Table 40 for the fiscal year 1925-26.

TABLE 40: DISTRIBUTION OF PERMANENT PARTIAL DISABILITIES ACCORDING TO PART OF BODY AFFECTED, IN NEW YORK STATE, BETWEEN JULY 1, 1925 AND JUNE 30, 1926

(Source: New York State Department of Labor)

Part of Body	Cases	Weeks of Compensated Disability	Compensation
Head.....	861	89,366	\$1,611,092
Face and neck.....	1,502	27,533	471,333
Upper extremities.....	11,430	482,800	8,421,187
Lower extremities.....	3,463	177,817	3,175,216
Two or more parts.....	71	9,899	180,312
	17,327	787,424	\$13,859,140

It is interesting to observe that injuries to the upper and lower extremities make up 87% of the total permanent partial disabilities. Injuries to the upper extremities account

for over two-thirds of all the injuries. Finger cases alone number nearly 7,200 or about 45% of all the permanent partial cases. The cost of the injuries to the upper extremities is correspondingly higher, although it will be noted that the cost of head injuries is greater in proportion to the total cost than is the number as compared with all cases.

TEMPORARY DISABILITY CASES

From the standpoint of numbers this type of injury is more important than any other. The actual disability period in these cases, under the present one-week waiting period, ranges from something more than a week to an indefinite period which in a few cases extends into years. At the present time the maximum amount of compensation for temporary disabilities is limited to \$3,500.¹ If an employee is receiving the maximum rate of \$20 per week, the benefits cease after a period of approximately 3½ years. When the rate is lower a longer benefit period is, of course, possible. The distribution of temporary disability cases according to the number of weeks of compensation paid during the year ended June 30, 1925 is shown in Table 41. The number of temporary partial disability cases included is not shown, but it is relatively insignificant. For the year 1922-23 there were only 179 such cases out of nearly 47,000 cases which were classified under temporary partial and temporary total disability.

The fiscal year 1923-24 was the last year for which injuries have been analyzed under the two weeks waiting period provision. The data as published for 1924-25 contain cases which were made compensable under both the old and new waiting periods. As would be expected, the number of cases decreased in general as the weeks of compensation increased. The cases of long duration which could be affected by the limit of \$3,500 have been compared with all compensable cases by the Department of Labor as follows:

Compensation Cases	1923-1924	1924-1925	1925-1926
Total compensation cases closed.....	72,983	76,216	99,673
Thereof temporary disabilities.....	56,326	59,064	81,195
Possibly beyond \$3,500 limit.....	29	56	77

¹ See footnote, p. 22.

TABLE 41: EXTENT OF COMPENSATED DISABILITY AND COMPENSATION COST IN TEMPORARY DISABILITY CASES, IN NEW YORK STATE, BETWEEN JULY 1, 1924 AND JUNE 30, 1925

(Source: New York State Department of Labor)

Number of Weeks Compensated	Number of Cases	Total Weeks of Disability Awarded	Total Compensation
0 to less than 1½	26,767	26,767	\$343,179
1½ " " 2¼	13,805	27,610	450,039
2¼ " " 3¼	9,430	28,290	472,589
3¼ " " 4¼	6,529	26,116	439,139
4¼ " " 5¼	4,782	23,910	406,536
5¼ " " 6¼	2,582	15,492	259,792
6¼ " " 7¼	1,434	10,038	179,159
7¼ " " 8¼	3,262	26,096	452,912
8¼ " " 9¼	2,359	21,231	363,969
9¼ " " 10¼	1,721	17,210	297,456
10¼ " " 11¼	1,235	13,585	235,374
11¼ " " 12¼	950	11,400	198,975
12¼ " " 13¼	756	9,828	170,831
13¼ " " 14¼	636	8,904	154,784
14¼ " " 15¼	466	6,990	117,858
15¼ " " 16¼	414	6,624	112,196
16¼ " " 17¼	347	5,899	102,452
17¼ " " 18¼	294	5,292	91,526
18¼ " " 19¼	260	4,940	84,988
19¼ " " 20¼	204	4,080	69,948
20¼ " " 21¼	193	4,053	69,375
21¼ " " 22¼	153	3,366	56,735
22¼ " " 23¼	149	3,427	58,448
23¼ " " 24¼	127	3,048	51,107
24¼ " " 25¼	132	3,300	56,353
25¼ " " 26¼	133	3,458	57,774
26¼ " " 27¼	93	2,511	40,971
27¼ " " 28¼	93	2,604	43,362
28¼ " " 29¼	95	2,755	47,493
29¼ " " 30¼	76	2,280	39,020
30¼ " " 31¼	67	2,077	35,480
31¼ " " 32¼	63	2,016	32,334
32¼ " " 33¼	52	1,716	27,529
33¼ " " 34¼	51	1,734	28,117
34¼ " " 35¼	58	2,030	32,491
35¼ " " 36¼	43	1,548	26,955
36¼ " " 37¼	37	1,369	23,370
37¼ " " 38¼	50	1,900	30,514
38¼ " " 39¼	36	1,404	25,737
39¼ " " 40¼	31	1,240	20,181
40¼ " " 41¼	33	1,353	20,917
41¼ " " 42¼	39	1,638	27,118
42¼ " " 43¼	25	1,075	17,773
43¼ " " 44¼	16	704	10,635
44¼ " " 45¼	30	1,350	22,493
45¼ " " 46¼	34	1,564	25,596
46¼ " " 47¼	21	987	15,563
47¼ " " 48¼	23	1,104	18,806
48¼ " " 49¼	14	686	11,722
49¼ " " 50¼	27	1,350	20,789
50¼ " " 51¼	16	816	13,079
51¼ " " 52¼	186	10,721	172,934
52¼ " " 53¼	136	9,651	151,906
53¼ " " 54¼	96	8,097	131,490
54¼ " " 55¼	91	8,886	148,597
Over 55¼	443	76,216	1,126,324
Total	81,105	474,336	\$7,741,989

Some cases included in the group designated as possibly beyond the \$3,500 limit may have been closed before the limit was reached, but because of the manner in which the records have been kept no separation is possible. For example, there may have been two cases grouped together which were compensated for 200 weeks each, with a total cost of \$6,500. Only one of these cases could have received the maximum of \$3,500, and it is possible that both cases may have been closed before either extended to the limit of compensable disability. While these long-time temporary injuries may finally develop into permanent total disability cases, physicians are very reluctant so to classify them if there is any possible doubt as to the permanency of the injury. It is felt that the period covered by the \$3,500 maximum allowance is too limited in most cases to permit physicians to judge the permanency of the disability with any degree of certainty.

Until recently the maximum compensation of \$3,500 has been held by the Industrial Board as being applicable to temporary partial and temporary total cases as separate disabilities, thus making the maximum amount \$7,000 in cases of recurring periods of total and partial disablement, or where partial temporary disability followed a period of temporary total disability in which the maximum amount of \$3,500 had already been paid. Under a ruling of the courts, however, the \$3,500 limit has been set as the maximum for both types of disability.¹ While the Industrial Board is unable to make awards for permanent total disability in these cases, many of the long-time temporary disability cases are classified as such by insurance carriers, and reserves are set up accordingly.

It is unfortunate that the temporary disabilities have not been tabulated according to the number of weeks actually lost rather than, as shown in Table 41, by weeks of compensation. There is a peculiar condition which enters into the analysis when weeks of compensation are used. Under the two weeks' waiting period clause it was impossible to obtain amounts of compensation in temporary cases of more than five weeks to seven weeks because an employee who was disabled exactly seven weeks would receive five weeks of compen-

¹ *Connolly vs. Roberts & Co.*, 214 A. D. 836 (1925).

254 WORKMEN'S COMPENSATION IN NEW YORK

sation, and if the lost time amounted to more than seven weeks the employee would be compensated for the exact time lost due to the recovery of compensation for the waiting period.

Although temporary disabilities may run into years, around 85% have a duration of 10½ weeks or less. Table 42 shows the distribution in number and cost of this group of cases for 1923-24 and 1924-25. The data for 1924-25 are influenced by the inclusion of 5,469 cases compensated under the one week waiting period. Using the more recent data as given for 1924-25 it is seen that nearly 22% of all compensable temporary injuries receive benefits for periods from one day to less than 1½ weeks. As soon as the full effect of the reduction in the waiting period is obtained, these cases will undoubtedly make up over a quarter of all compensable injuries. At the present time this group represents actual disability periods of something over a week to less than 2½ weeks. The average cost per case was less than \$13 in 1924-25. The maximum amount which could be received in any one case was less than \$30. The groups which were compensated for 1½ to 2½ weeks accounted for over 12% of the

TABLE 42: DISTRIBUTION OF TEMPORARY DISABILITY CASES AND COMPENSATION BY WEEKS OF DISABILITY, IN NEW YORK STATE, BETWEEN JULY 1, 1923 AND JUNE 30, 1925
(Source: New York State Department of Labor)

Weeks	1923-1924				1924-1925			
	Number of Cases	Per Cent of all Cases	Total Compensation	Cost Per Case	Number of Cases	Per Cent of all Cases	Total Compensation	Cost Per Case
0 to 1½....	15,227	20.86	\$201,543	\$13.24	16,685	21.89	\$215,780	\$12.93
1½- 2½....	8,825	12.09	287,286	32.55	9,462	12.41	308,917	32.65
2½- 3½....	6,154	8.43	303,125	49.26	6,617	8.68	329,684	49.82
3½- 4½....	4,429	6.07	293,935	66.37	4,674	6.13	310,506	66.43
4½- 5½....	2,380	3.26	193,202	81.18	2,739	3.59	226,119	82.56
5½- 6½....	272	.37	27,515	101.16	686	.90	68,252	99.49
6½- 7½....	1,629	2.23	195,047	119.73	1,523	2.00	190,263	124.93
7½- 8½....	3,932	5.39	545,297	138.68	3,416	4.48	469,957	137.58
8½- 9½....	2,492	3.41	379,690	152.36	2,438	3.20	377,836	154.98
9½-10½....	1,853	2.54	311,266	167.98	1,757	2.31	302,439	172.13
Total up to 10½....	47,193	64.66	\$2,737,906	\$58.02	49,997	65.60	\$2,799,753	\$55.99
Total cases temporary disability....	56,326	77.18	\$6,319,314	\$112.19	59,064	77.50	\$6,581,199	\$111.42

total at an average cost of less than \$33 per case. The maximum for any one case was less than \$50. The cases up to 2½ weeks of compensable disability make up over 45% of all cases, including death and other types.

The significance of these facts becomes clear when it is recalled that all cases must be heard before a referee, which involves the loss of time from work for the employee and the loss of his services for the employer immediately after a period of disability through accident. The Department of Labor admits that great difficulty is experienced in getting employees entitled to compensation to appear for hearing when the period of compensation is very short, especially in the case of the more highly paid employees, such as building trade workers. Since these cases are relatively unimportant from the standpoints of the disability period, seriousness of the injury and the money cost, they can hardly be considered as requiring the same methods of adjudication as the more serious cases.

COMPENSATED OCCUPATIONAL DISEASE CASES

Since the occupational disease clause was added to the workmen's compensation law in 1920 there have been comparatively few of these cases in which awards have been made. During 1923-24 and 1924-25 these cases numbered 216 and 202 respectively, with a total of 12 death cases for both years. The number for each fiscal year since 1919-20, according to the degree of disability, is given in Table 43. The closed award cases for 1923-24 are shown according to the type or cause of the disease. The total cost of the 216 cases, exclusive of medical costs, was \$88,268, or an average of \$409 per case. This total amounted to only one third of one per cent of all direct benefits awarded under workmen's compensation. Lead poisoning cases numbered 134, constituting 62% of the total. The cost of these cases, exclusive of medical charges, amounted to more than \$61,000, or about 70% of the entire cost for all occupational disease cases. The remaining 82 cases were distributed into 17 classes, according to the grouping and terminology employed by the Department of Labor. In considering these cases it must be borne

256 WORKMEN'S COMPENSATION IN NEW YORK

**TABLE 43: COMPENSATED OCCUPATIONAL DISEASE CASES,
NEW YORK STATE, BETWEEN JULY 1, 1919 AND JUNE 30, 1925**

(Source: New York State Department of Labor)

Year	Total	Death	Permanent Total	Permanent Partial	Temporary Disability
1919-1920.....	19	2	..	1	16
1920-1921.....	81	..	..	3	78
1921-1922.....	86	2	..	4	80
1922-1923.....	103	1	..	2	100
1923-1924.....	216	9	..	9	198
1924-1925.....	202	3	..	4	195

**Classification by Type of Occupational Disease Cases between July 1,
1923 and June 30, 1924**

Occupational Diseases	Total	Type of Disability			Compensation Exclusive of Medical Costs
		Death or Permanent Total	Permanent Partial	Temporary	
Anthrax.....	16	3	6	7	\$16,919
Lead poisoning.....	134	6	..	128	61,329
Handling and preparing hides, furs, etc.....	14	..	1	13	2,754
Hydrocyanic acid.....	2	..	..	2	37
Mercury.....	1	..	..	1	33
Arsenic.....	3	..	2	1	703
Zinc.....	3	..	..	3	126
Wood alcohol.....	3	..	..	3	2,007
Dope (lacquers).....	1	..	..	1	494
Chrome ulceration.....	8	..	..	8	1,531
Nitro derivatives of benzol.....	3	..	..	3	72
Amido derivatives of benzol.....	5	..	..	5	620
Nickel carbonyl.....	1	..	..	1	180
Compressed air (bends).....	9	..	..	9	864
Dust.....	1	..	..	1	23
Heat and light.....	3	..	..	3	102
Occupational activity (cel- lulitis, etc.).....	7	..	..	7	354
Copper and copper salts.....	2	..	..	2	120
	216	9	9	198	\$88,268

in mind that the workmen's compensation law definitely provides for the types of occupational diseases which can be made compensable.

In addition to awards made for occupational diseases, there has been an increasing number of cases compensated as accidents under Section 48 of the workmen's compensation law. These have been classified as being caused by poisonous substances, and are shown, according to the nature of the substances and the degree of disability, in Table 44. While these cases are comparatively few in number, over 10% of

COST OF COMPENSATION

257

TABLE 44: CASES OF POISONING COMPENSATED BETWEEN JULY 1, 1914 AND JUNE 30, 1925

(Source: New York State Department of Labor)

Year	Total	Death	Permanent Total	Permanent Partial	Temporary Disability
1914-1915.....	87	2	..	2	83
1915-1916.....	82	8	..	4	70
1916-1917.....	90	10	..	1	79
1917-1918.....	112	24	..	2	86
1918-1919.....	58	8	..	4	46
1919-1920.....	126	14	..	7	105
1920-1921.....	113	16	..	4	93
1921-1922.....	144	14	..	4	126
1922-1923.....	160	14	..	6	140
1923-1924.....	217	16	..	11	190
1924-1925.....	254	22	..	6	226

Classification of Poison Cases, Fiscal Year 1923-24

Poisonous Substances	Total	Kind of Disability			Compensation
		Death or Permanent Total	Permanent Partial	Temporary	
Carbon monoxide and dioxide.....	8	2	..	6	\$15,258
Arsenic.....	2	..	..	2	433
Dyes, etc. (handling materials).....	64	3	3	58	32,886
Poison ivy.....	29	..	3	26	4,111
Illuminating gas.....	24	3	..	21	23,113
Hydrocyanic acid and cyanogen.....	7	2	..	5	7,828
All other (indefinite gases, etc.).....	80	6	3	71	47,250
Carbon bisulphide.....	2	..	1	1	1,689
Septic infection.....	1	..	1	..	67
Total.....	217	16	11	190	\$132,635

them have resulted in death, while only about 3% are classified as permanent partial disabilities. The cost of the direct compensation benefits in 1923-24 amounted to \$132,635 or one-half of one per cent of the total closing awards made during the year. The average cost per case was \$611.

COST OF COMPENSATION

Cost per Case by Type of Disability

The average cost per case according to types of disability has been computed by the National Council on Compensation Insurance from data contained on Schedule "Z." Fig-

258 WORKMEN'S COMPENSATION IN NEW YORK

ures for the policy years 1918 through 1923 are shown on Table 45. These figures have the additional advantage of showing average medical costs. In the first part of the table the medical averages were obtained by dividing the total medical cost incurred by insurance carriers for all cases, whether compensable or not, by the number of compensable cases.

**TABLE 45: AVERAGE COST PER CASE BY KIND OF INJURY,
NEW YORK STATE, FOR POLICY YEARS 1918 TO 1923**

(Source: National Council on Compensation Insurance)

Year	Kind of Injury					Medical Costs
	Death	Permanent Total	Permanent Partial		Temporary Total	
			Major	Minor		
A. Cost Based on Actual Losses						
1918.....	\$4,060	\$10,339	\$2,271	\$554	\$113	\$51
1919.....	4,451	11,650	2,587	637	114	67
1920.....	5,339	13,708	2,991	636	122	96
1921.....	5,360	14,874	2,925	608	114	103
1922.....	5,377	12,427	2,896	619	121	107
1923.....	5,709	11,553	3,073	637	134	119
B. Cost Modified to the Basis of Present New York Law						
1918.....	\$4,795	\$11,372	\$2,513	\$626	\$102	\$64
1919.....	5,336	12,920	2,849	721	103	73
1920.....	5,910	13,845	3,284	687	101	98
1921.....	5,853	14,874	3,211	654	93	83
1922.....	5,807	12,427	3,180	665	99	75
1923.....	6,028	11,553	3,334	678	109	83

The averages in Table 45 have been computed by two methods. In section A of the table the averages have been found by dividing the total losses for each year by the number of cases reported. In section B all policy years have been placed upon the same level by adjusting figures by application of theoretical law amendment factors, so that figures for all years are brought to the benefit level of the present New York law. Medical losses have been converted to the cost level of the policy year 1923 by applying a common set of manual rates to the classification payrolls reported in Schedule "Z" for each policy year. The total of the manual premiums thus obtained for each policy year was divided into the total actual losses reported for each year in

Schedule "Z". The resultant ratio of losses to premiums for the policy year 1923 was divided by the corresponding ratio for each of the other years. In short, section A shows what the actual average costs were in the various years covered, and Section B shows what the losses would have been had the present provisions of the law been in effect throughout the period. Consequently, the increases shown between 1918 and 1923 in section A are due to all causes affecting compensation costs, while the increases in section B are due to factors other than the liberalization of the law. It must be remembered, however, that when comparing these averages only *average costs per case* are being compared. These figures do not indicate changes in the entire cost of compensation from year to year, since the entire cost is affected by accident frequency as well as by average cost per case. It will be observed that the average costs per temporary total case are smaller on the basis of the present law than under the laws existing in the various policy years. The decrease is due to the change in waiting period from two weeks to one which made compensable so large a number of temporary total injuries of short duration as to reduce the average cost per case. This, of course, does not mean that the cost of temporary total injuries is smaller now than formerly.

The increase in actual cost per case, as shown in section A was consistently maintained except in the case of permanent total which reached its highest point in 1921 and declined in 1922 and again in 1923. In the five year period between 1918 and 1923 the average cost per case increased 40% in death cases, nearly 11% in permanent totals, 34% in major permanent partials, 15% in minor permanent partials, and 18% in temporary totals. The greatest increase of 133% occurred in the medical item.

With the increase in benefit scales factor removed, the increases in average cost per case, as shown in section B, are confined to smaller limits, but still a definite upward tendency is discernible. The factors which were still effective in determining the cost were accident severity, wage rates and the degree of liberality with which the law was administered. In death cases, costs were influenced by wage rates, the number and relationship of dependents, and administra-

260 WORKMEN'S COMPENSATION IN NEW YORK

TABLE 46: COMPOSITE NEW YORK STATE
(Source: National C

Policy Year	Payroll		Earned Premium		Death		Permanent Total	
	Policies Excluding Medical Aid	Total	Policies Excluding Medical Aid	Total	No. of Cases	Amount	No. of Cases	Amount
1918...	\$54,720,000	\$2,095,511,000	\$743,744	\$30,600,716	685	\$2,781,182	95	\$982,164
1919...	59,561,000	2,711,740,000	618,262	36,523,453	651	2,897,341	66	768,916
1920...	65,106,000	2,919,403,500	809,515	38,800,946	571	3,048,483	60	822,483
1921...	46,012,400	2,675,174,600	469,432	32,129,106	591	3,167,838	49	728,837
1922...	56,685,700	2,872,266,500	505,444	36,008,333	713	3,833,533	38	473,208
1923...	103,665,700	3,446,408,700	1,049,820	43,348,574	889	5,074,997	65	750,952
A.								
1918...	\$54,720,000	\$2,095,511,000	\$743,744	\$30,600,716	685	\$3,284,576	95	\$1,080,380
1919...	59,561,000	2,711,740,000	618,262	36,523,453	651	3,473,912	66	852,728
1920...	65,106,000	2,919,403,500	809,515	38,800,946	571	3,374,671	60	890,708
1921...	46,012,400	2,675,174,600	469,432	32,129,106	591	3,459,768	49	728,837
1922...	56,685,700	2,872,266,500	505,444	36,008,333	713	4,140,237	38	473,208
1923...	103,665,700	3,446,408,700	1,049,820	43,348,574	889	5,359,197	65	750,952
B.								

tive policy. These figures bring out strikingly the fact that by no means all of the rapidly increasing cost of workmen's compensation in New York state can be attributed to the legislative liberalization of the law's provisions.

For the purpose of providing the basic data from which certain tables have been computed and from which other computations may be made, Table 46 gives the composite totals derived from Schedule "Z", which is filed annually by every insurance carrier, covering the policy years 1918 through 1923. Later figures are not available because of the necessity of allowing sufficient time after the conclusion of a policy year to permit the inclusion of complete figures, and because of the care and thoroughness exercised in their preparation. As in the case of Table 45, the data in this table are shown both on the basis of actual figures and also figures adjusted to the present benefit level of the New York law.

THE TREND OF COSTS AS REPORTED BY EMPLOYERS

In addition to material furnished by official insurance associations, a general index of the trend of compensation costs to the employer was sought to indicate how much of a financial burden was imposed by the original New York law

COST OF COMPENSATION

261

ULE "Z" FOR POLICY YEARS 1918-1923
on Compensation Insurance)

Losses									
Permanent	Minor		Temporary		Medical			Total	
	Partial	Partial	Total	Total	Amount	Amount	No.	Amount	Amount
Actual	No. of Cases	Amount	No. of Cases	Amount	Actually Paid	Adjusted to Basis of Full Aid on All Policies	of Cases	Actually Paid	with Medical Adjusted
Grand Total									
\$3,526,111	4,255	\$2,358,526	41,759	\$4,717,104	\$2,402,137	\$2,466,595	48,347	\$16,767,224	\$16,832,082
3,663,613	5,580	3,553,423	44,207	5,017,510	3,414,226	3,489,339	51,920	19,315,029	19,390,142
3,380,131	5,656	3,599,339	33,750	4,134,001	3,875,330	3,964,463	41,167	18,859,767	18,948,900
3,079,609	5,088	3,093,110	34,318	3,906,411	4,175,618	4,250,779	41,059	18,151,413	18,226,574
3,312,942	7,005	4,333,640	42,045	5,093,146	5,353,171	5,459,194	51,152	22,996,560	23,103,583
4,980,112	9,460	6,025,127	48,055	6,431,021	6,939,766	7,154,999	60,080	30,171,975	30,387,108
Present Law									
\$3,903,405	4,255	\$2,665,134	64,309	\$6,537,906	..	\$4,512,134	70,897	..	\$21,983,535
4,033,638	5,580	4,022,475	68,079	7,009,461	..	5,513,156	75,792	..	24,905,370
3,711,384	5,656	3,887,286	51,975	5,254,315	..	5,800,009	59,392	..	22,458,573
3,381,411	5,088	3,325,093	52,850	4,918,171	..	4,964,910	59,651	..	20,777,690
4,296,301	7,005	4,658,663	64,749	6,412,271	..	5,512,776	73,856	..	25,492,456
5,370,872	9,460	6,416,760	74,005	8,096,655	..	7,154,899	186,030	..	33,149,335

and how greatly the many amendments tending to liberalize the law and the actual experience in operation had increased the cost. On the questionnaires sent by the Board to employers, they were asked to give for each year since 1914, or for as far back as possible, their average employment, total payroll and workmen's compensation premiums. Those insuring with dividend paying carriers were also asked to give the dividends received by years in order that those might be deducted from the gross premiums to obtain the net payments. Replies were classified by industries, since conditions and premiums differ widely among different industries. A considerable number of replies was placed in a miscellaneous classification for lack of a sufficient number of replies from a given type of work to permit of its treatment as a separate industry. No tabulation of those schedules as a separate industrial group was attempted, but they were included in the composite tabulation of all industries combined.

A paucity of data was found for the earlier years from 1914 to 1918. Either many companies were not in existence at that time or found it impossible to provide data for that period. A test tabulation of a number of replies which covered the entire period and of another group which began to report data in various years from 1917 to 1921 indicated that

262 WORKMEN'S COMPENSATION IN NEW YORK

during the period common to both groups the movements were substantially similar. It was consequently considered proper to include in the tabulation data from all schedules, beginning with whatever year was first given on the schedule. Thus the figures for years after 1914 are based upon a constantly increasing coverage. In order to show the trend of wage costs and compensation costs, index numbers have been computed using the figures for 1915, the first complete year of the law in operation, as the base.

The method employed for showing the cost of compensation to the employer has been upon a per wage earner basis, since this provides a unit common to all conditions. These figures are obtained by dividing the net premiums for the year by the average employment for that year. Since premium costs are largely influenced by payrolls, the average wage cost per wage earner has also been computed for each year since 1915 by dividing the total payroll by the average number employed. The average premium cost and average wage cost, together with index numbers to show the rate of increase since 1915 are shown on Tables 48-53 and Charts 9-14 for individual industries and for all industries combined. The average costs for 1925 for the several industries are assembled on Table 47.

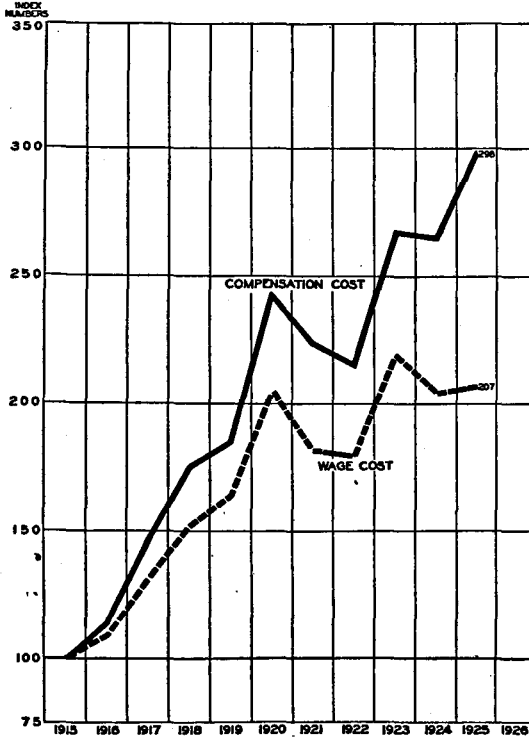
TABLE 47: AVERAGE WORKMEN'S COMPENSATION PREMIUM COST AND WAGE COST PER WAGE EARNER BY INDUSTRIES IN 1925

(Source: National Industrial Conference Board)

Industry	Average Premium Cost per Wage Earner	Average Wage Cost per Wage Earner
All industries combined.....	\$18.89	\$1,426.57
Lumber and millwork.....	39.76	1,444.14
Paper and pulp.....	33.65	1,575.67
Iron and steel.....	26.40	1,490.22
Chemicals.....	25.57	1,827.40
Furniture.....	24.30	1,554.19
Metal working.....	22.96	1,543.81
Public utilities.....	19.17	1,679.61
Food products.....	15.33	1,183.72
Printing and publishing.....	10.15	1,628.84
Textiles.....	7.69	1,006.35
Boots and shoes.....	6.16	1,117.17
Textile products.....	2.22	973.65

CHART 9: COMPENSATION PREMIUM COST AND WAGE COST PER WAGE EARNER IN ALL INDUSTRIES, NEW YORK STATE, 1915 TO 1926

1915 = 100



264 WORKMEN'S COMPENSATION IN NEW YORK

CHART 10: COMPENSATION PREMIUM COST AND WAGE COST PER WAGE EARNER IN SPECIFIED INDUSTRIES, NEW YORK STATE, 1915 TO 1926

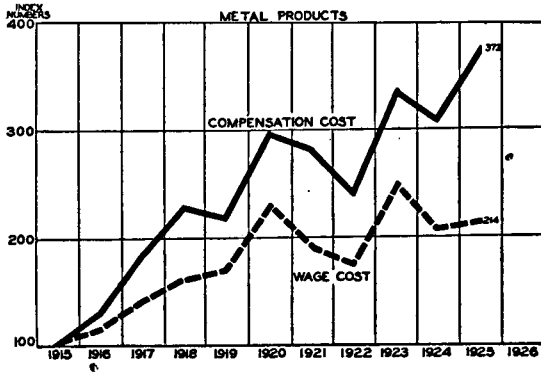
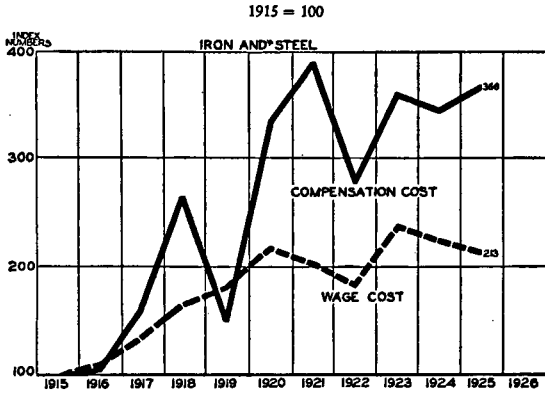
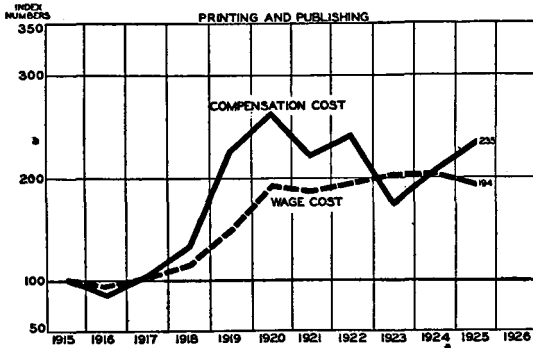
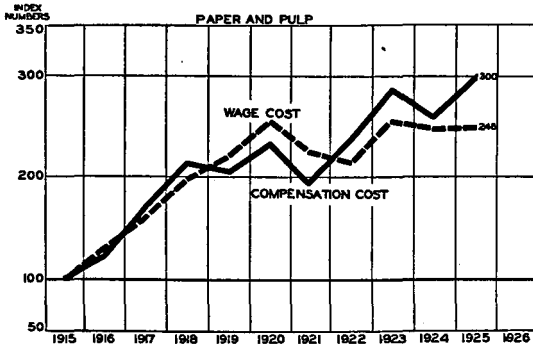


CHART 11: COMPENSATION PREMIUM COST AND WAGE COST PER WAGE EARNER IN SPECIFIED INDUSTRIES, NEW YORK STATE, 1915 TO 1926

1915 = 100



266 WORKMEN'S COMPENSATION IN NEW YORK

CHART 12: COMPENSATION PREMIUM COST AND WAGE COST PER WAGE EARNER IN SPECIFIED INDUSTRIES, NEW YORK STATE, 1915 TO 1926

1915=100

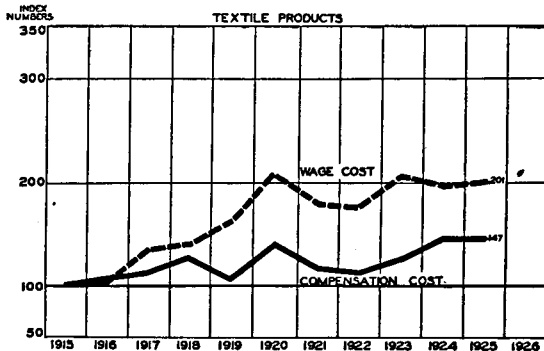
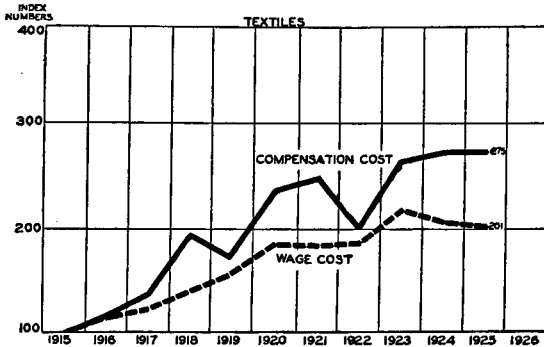
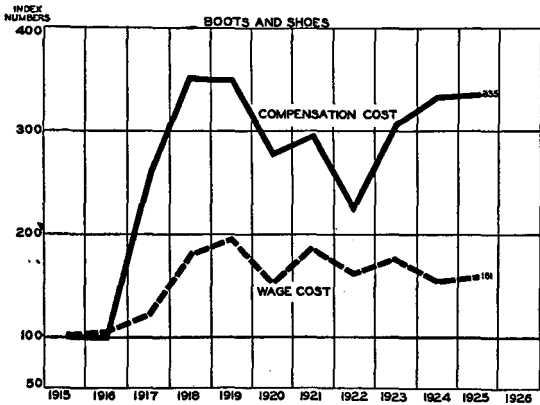
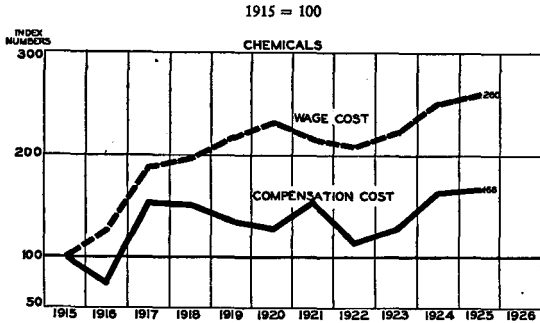


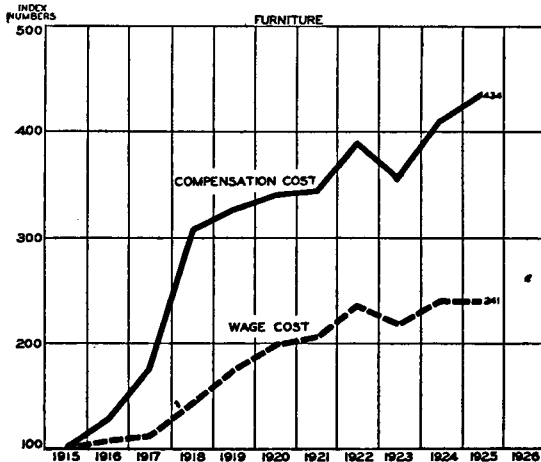
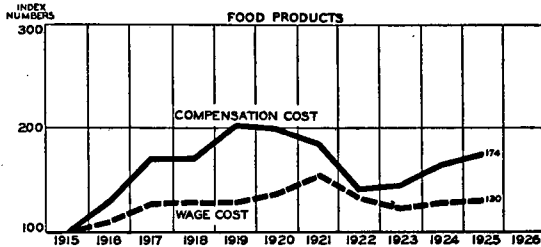
CHART 13: COMPENSATION PREMIUM COST AND WAGE COST PER WAGE EARNER IN SPECIFIED INDUSTRIES, NEW YORK STATE, 1915 TO 1926



268 WORKMEN'S COMPENSATION IN NEW YORK

CHART 14: COMPENSATION PREMIUM COST AND WAGE COST PER WAGE EARNER IN SPECIFIED INDUSTRIES, NEW YORK STATE, 1915 TO 1926

1915 = 100



COST OF COMPENSATION

269

TABLE 48: AVERAGE WORKMEN'S COMPENSATION PREMIUM COST AND WAGE COST PER WAGE EARNER IN ALL INDUSTRIES, 1915-1925

1915 = 100
(Source: National Industrial Conference Board)

Year	Average Premium Cost per Wage Earner		Average Wage Cost per Wage Earner	
	Actuals	Index Nos.	Actuals	Index Nos.
1915.....	\$6.33	100	\$688.88	100
1916.....	7.19	114	751.20	109
1917.....	9.24	146	900.42	131
1918.....	11.10	175	1,044.61	152
1919.....	11.71	185	1,132.39	164
1920.....	15.35	243	1,408.93	205
1921.....	14.17	224	1,253.77	182
1922.....	13.60	215	1,236.09	179
1923.....	16.89	267	1,509.18	219
1924.....	16.80	265	1,407.54	204
1925.....	18.89	298	1,426.57	207

TABLE 49: AVERAGE WORKMEN'S COMPENSATION PREMIUM COST AND WAGE COST PER WAGE EARNER, INDIVIDUAL INDUSTRIES, 1915-1925

1915 = 100
(Source: National Industrial Conference Board)

Year	Iron and Steel				Metal Products			
	Average Premium Cost per Wage Earner		Average Wage Cost per Wage Earner		Average Premium Cost per Wage Earner		Average Wage Cost per Wage Earner	
	Actuals	Index Nos.	Actuals	Index Nos.	Actuals	Index Nos.	Actuals	Index Nos.
1915.....	\$7.22	100	\$698.77	100	\$6.15	100	\$720.50	100
1916.....	7.65	106	764.97	109	8.01	130	849.22	118
1917.....	11.64	161	944.26	135	11.23	183	1,015.22	141
1918.....	19.07	264	1,157.77	166	14.09	229	1,169.98	162
1919.....	10.82	150	1,261.79	181	13.47	219	1,231.88	171
1920.....	24.13	334	1,517.33	217	18.08	294	1,666.73	231
1921.....	28.12	389	1,414.44	202	17.28	281	1,365.53	190
1922.....	20.24	278	1,288.81	184	14.74	240	1,278.53	177
1923.....	25.83	358	1,661.30	238	20.54	334	1,786.53	248
1924.....	24.82	343	1,575.14	225	18.97	308	1,490.76	207
1925.....	26.40	366	1,490.22	213	22.96	373	1,543.81	214

The rates of premium cost increase differ greatly in the various industries but, with three exceptions, they are greater than the increase in wage costs. For all reporting plants combined, the average premium cost per wage earner increased 198% between 1915 and 1925, while the average wage cost per wage earner increased 107%.

270 WORKMEN'S COMPENSATION IN NEW YORK

TABLE 50: AVERAGE WORKMEN'S COMPENSATION PREMIUM COST AND WAGE COST PER WAGE EARNER, INDIVIDUAL INDUSTRIES, 1915-1925

1915 = 100

(Source: National Industrial Conference Board)

Year	Paper and Pulp				Printing and Publishing			
	Average Premium Cost per Wage Earner		Average Wage Cost per Wage Earner		Average Premium Cost per Wage Earner		Average Wage Cost per Wage Earner	
	Actuals	Index Nos.	Actuals	Index Nos.	Actuals	Index Nos.	Actuals	Index Nos.
1915.....	\$11.23	100	\$634.93	100	\$4.32	100	\$840.35	100
1916.....	13.86	123	822.43	130	3.78	87	803.22	96
1917.....	19.19	171	1,021.84	161	4.45	103	854.73	102
1918.....	24.08	214	1,259.41	198	5.75	133	981.58	117
1919.....	23.08	206	1,407.69	222	9.85	228	1,257.95	150
1920.....	26.03	232	1,613.36	254	11.49	266	1,617.33	192
1921.....	21.65	193	1,421.93	224	9.58	222	1,580.94	188
1922.....	26.35	235	1,359.59	214	10.40	241	1,642.00	195
1923.....	32.03	285	1,607.46	253	8.36	174	1,700.01	202
1924.....	29.14	259	1,567.76	247	8.92	206	1,702.22	203
1925.....	33.65	300	1,575.67	248	10.15	235	1,628.84	194

TABLE 51: AVERAGE WORKMEN'S COMPENSATION PREMIUM COST AND WAGE COST PER WAGE EARNER, INDIVIDUAL INDUSTRIES, 1915-1925

1915 = 100

(Source: National Industrial Conference Board)

Year	Textiles				Textile Products			
	Average Premium Cost per Wage Earner		Average Wage Cost per Wage Earner		Average Premium Cost per Wage Earner		Average Wage Cost per Wage Earner	
	Actuals	Index Nos.	Actuals	Index Nos.	Actuals	Index Nos.	Actuals	Index Nos.
1915.....	\$2.79	100	\$501.83	100	\$1.51	100	\$494.71	100
1916.....	3.24	116	577.63	115	1.59	106	495.39	102
1917.....	3.83	137	620.07	124	1.71	113	657.06	136
1918.....	5.41	194	702.12	140	1.94	128	690.29	142
1919.....	4.86	174	781.50	156	1.60	106	791.30	163
1920.....	6.62	237	933.60	186	2.13	140	1,011.46	209
1921.....	6.94	249	916.18	183	1.79	118	879.14	181
1922.....	5.62	201	931.70	186	1.71	113	857.60	177
1923.....	7.38	265	1,099.87	219	1.92	127	996.35	206
1924.....	7.68	275	1,031.90	206	2.22	147	961.99	198
1925.....	7.69	275	1,006.35	201	2.22	147	937.65	201

COST OF COMPENSATION

271

TABLE 52: AVERAGE WORKMEN'S COMPENSATION PREMIUM COST AND WAGE COST PER WAGE EARNER, INDIVIDUAL INDUSTRIES, 1915-1925

1915=100

(Source: National Industrial Conference Board)

Year	Boots and Shoes				Furniture			
	Average Premium Cost per Wage Earner		Average Wage Cost per Wage Earner		Average Premium Cost per Wage Earner		Average Wage Cost per Wage Earner	
	Actuals	Index Nos.	Actuals	Index Nos.	Actuals	Index Nos.	Actuals	Index Nos.
1915.....	\$1.84	100	\$687.97	100	\$5.60	100	\$641.75	100
1916.....	1.84	100	715.91	104	7.22	129	685.53	107
1917.....	4.75	258	838.55	122	9.83	175	721.66	112
1918.....	6.48	352	1,254.07	182	17.24	308	931.53	145
1919.....	6.43	349	1,349.60	196	18.29	327	1,130.09	176
1920.....	5.14	279	1,051.90	153	19.12	341	1,269.19	198
1921.....	5.44	296	1,292.20	188	19.24	344	1,319.88	206
1922.....	4.14	225	1,129.17	164	21.83	390	1,512.73	236
1923.....	5.47	303	1,222.18	178	20.04	358	1,404.23	219
1924.....	6.13	333	1,070.22	156	22.96	410	1,534.06	241
1925.....	6.16	335	1,111.17	161	24.30	434	1,554.19	241

TABLE 53: AVERAGE WORKMEN'S COMPENSATION PREMIUM COST AND WAGE COST PER WAGE EARNER, INDIVIDUAL INDUSTRIES, 1915-1925

1915=100

(Source: National Industrial Conference Board)

Year	Food Products				Chemicals			
	Average Premium Cost per Wage Earner		Average Wage Cost per Wage Earner		Average Premium Cost per Wage Earner		Average Wage Cost per Wage Earner	
	Actuals	Index Nos.	Actuals	Index Nos.	Actuals	Index Nos.	Actuals	Index Nos.
1915.....	\$8.80	100	\$910.58	100	\$15.38	100	\$701.33	100
1916.....	11.48	130	999.81	110	11.66	76	889.61	127
1917.....	15.02	171	1,159.01	127	23.52	153	1,314.19	187
1918.....	15.06	171	1,178.36	129	23.11	150	1,381.37	197
1919.....	17.65	201	1,176.23	129	20.92	136	1,526.08	218
1920.....	17.46	198	1,252.94	138	20.04	130	1,626.71	232
1921.....	16.10	183	1,412.27	155	23.72	154	1,518.32	216
1922.....	12.48	142	1,213.40	133	17.62	115	1,466.35	209
1923.....	12.59	143	1,149.12	126	19.80	129	1,560.21	222
1924.....	14.41	164	1,172.33	129	25.04	163	1,747.05	249
1925.....	15.33	174	1,183.72	130	25.57	166	1,827.40	260

272 WORKMEN'S COMPENSATION IN NEW YORK

Ratio of Compensation Cost to Payrolls and Sales

The general complaint that compensation costs have mounted to such an extent that they have become a definite element of manufacturing expense suggests the advantage of relating these costs to certain indices of plant expense and productivity in order to determine how great a part compensation costs play. Employers were therefore asked to give by years the ratio of compensation cost to payroll and to sales. As heretofore, replies were grouped by industries, and the average ratio for an industry for any one year was determined by finding the median. That is, the various ratios were arranged in numerical sequence and the center ratio was accepted as representative of the group.

The constancy of those ratios throughout the entire period covered is remarkable. The tendency is upward, but in no industry was the ratio of premiums to payrolls doubled between 1915 and 1925. The range in 1925 was from .003 in textile products to .025 in lumber and mill work. Even in the large metal working group the ratio of premiums to payrolls was only .016 in 1925.

The ratios of premiums to sales of course run lower than in the case of payrolls, but these ratios showed an even greater uniformity. Again a slowly rising trend is perceptible in the majority of industries indicating that compensation costs have mounted faster than sales. Not only is the consistency within an industry over the period covered remarkable, but there is a striking similarity between industries. For example in 1925, the range among industries was from .001 to .006 and was distributed as follows: .001, one industry; .002, three industries; .003, one industry; .004, one industry; .005, two industries, and .006, three industries. Figures are shown in detail on Tables 54 and 55.

From the replies of employers no definite conclusion can be reached as to the direct effect of compensation costs upon competition with other states. With some plants it appears to be a comparatively small factor, while others regard it as a serious problem. Many employers ignored the question, implying that they were not greatly concerned. One third of the employers who commented upon the competitive phase of compensation costs found this the most serious

COST OF COMPENSATION

273

TABLE 54: RATIO OF WORKMEN'S COMPENSATION PREMIUM COSTS TO PAYROLLS, BY INDUSTRIES, 1915-1925

(Source: National Industrial Conference Board)

Year	Lumber and Mill Work	Boots and Shoes	Food Products	Printing and Publishing	Textiles	Textile Products	Metal Working	Paper and Pulp	Furniture	Chemicals	Public Utilities
1915.....	..	..	.010	.007	.006	..	.010	.019	.010	.006	..
1916.....	.016	..	.010	.006	.005	.002	.009	.017	.010	.006	..
1917.....	.014	..	.011	.005	.005	.003	.012	.020	.016	.008	..
1918.....	.019	..	.014	.003	.006	.003	.013	.016	.018	.017	.012
1919.....	.023	.004	.014	.006	.005	.003	.015	.020	.015	.013	.015
1920.....	.025	.006	.014	.008	.006	.003	.014	.019	.014	.011	.012
1921.....	.028	.004	.012	.006	.006	.003	.014	.017	.014	.012	.020
1922.....	.028	.005	.012	.006	.006	.002	.014	.020	.014	.013	.019
1923.....	.022	.005	.012	.007	.007	.003	.014	.014	.014	.011	.016
1924.....	.025	.005	.013	.006	.007	.003	.016	.020	.014	.013	.018
1925.....	.025	.006	.015	.007	.008	.003	.016	.019	.015	.011	.015

TABLE 55: RATIO OF WORKMEN'S COMPENSATION PREMIUM COSTS TO SALES, BY INDUSTRIES, 1915-1925

(Source: National Industrial Conference Board)

Year	Lumber and Mill Work	Boots and Shoes	Food Products	Printing and Publishing	Textiles	Textile Products	Metal Working	Paper and Pulp	Furniture	Chemicals	Public Utilities
1915.....	..	..	..	..	.001	..	.003	.004	.003	..	..
1916.....	.002	..	..	..	.001	.0007	.003	.003	.003	.002	..
1917.....	.002	..	..	.003	.001	.0007	.004	.003	.005	.002	..
1918.....	.004	..	.001	.004	.001	.0007	.004	.003	.005	.003	..
1919.....	.004	..	.001	.003	.001	.0006	.004	.004	.004	.004	.004
1920.....	.005	.001	.001	.004	.001	.0007	.004	.003	.004	.003	.003
1921.....	.006	.001	.001	.002	.002	.0008	.005	.003	.004	.004	.005
1922.....	.005	.001	.001	.003	.001	.0008	.004	.003	.004	.003	.006
1923.....	.004	.002	.001	.002	.002	.0007	.004	.003	.004	.004	.006
1924.....	.004	.002	.001	.003	.002	.001	.005	.004	.004	.004	.006
1925.....	.006	.002	.002	.003	.002	.001	.006	.005	.005	.004	.006

problem involved in their competition with other states. These plants were largely confined to the metal working industries, including foundries, drop forge plants, manufacturers of automobile parts, machines and stampings. These are among the most universal industries, found extensively in manufacturing states. Their margin of profit is kept low by close competition, and any addition to their operating expense might well be regarded with alarm. One company,

274 WORKMEN'S COMPENSATION IN NEW YORK

manufacturing machinery, reported that the cost of compensation and other labor laws in New York State had become an important factor in determining the location for expansion and new construction. A drop forge plant stated that their manual rate in New York was four times as high as in Pennsylvania. A food packing company found the costs of compensation and other labor law requirements so high in New York that, when it decided to erect a new plant, New York was not considered. These cases indicate that, while compensation costs in New York State are seldom sufficiently high actually to force an industry out of the state, they may be a considerable factor in dictating the advisability of locating new plants elsewhere.

FACTORS INFLUENCING THE RISING COST OF COMPENSATION IN NEW YORK STATE

Insurance companies were not unanimous as to the relative importance of the several factors which have caused the increase in compensation costs in New York State. All carriers, of course, agree that the greatest single factor has been the liberalization of benefits through amendments to the original law. Many carriers believe that the rise in medical expense is due to the legislative extension of medical benefits, higher charges by physicians and the unethical tactics of some members of the profession. Another widely cited cause of rising compensation cost is the liberality of administration. One company emphatically believes that this is the chief cause for the great increase in compensation costs, while another characterizes it as indefinite and intangible; but the large majority of insurance carriers sustain the opinion that it is a factor of first rank in affecting the cost of compensation.

Increased claim cost was mentioned by half of the carriers, which replied to the Board's questionnaire, as a decided factor in increased cost, and it was thought by some to be peculiar to New York. Only a few of the many companies which considered it important attempted to give a definite statement as to the extent of its influence on the cost of compensation. One carrier provided the following table as an indi-

cation of the increasing ratio of claim expenses to earned premiums.

Year	Claim Expenses Incurred	Ratio to Earned Premiums
1920	\$87,122.98	5.03%
1921	84,649.91	6.19
1922	79,589.62	6.20
1923	108,249.98	6.43
1924	137,170.99	7.41
1925	160,453.81	7.22

The explanation which accompanied the table stated that "within the last few years there has been a great increase in the number of hearings on workmen's compensation cases. Where at one time hearings in the Labor Department State Divisions were held in one place a day, there are now three hearings in three different places on the same day, requiring additional claim men to handle the hearings in all parts of the state. This has caused an increase in the claim expense to insurance carriers." Other factors reported as affecting costs were the growing familiarity of employees with the law, the failure of employers to cooperate with the carriers by reporting accidents promptly, the overpayment of certain types of injury, increased accident frequency and the introduction of labor saving machinery.

NEW YORK COSTS COMPARED WITH OTHER STATES

Most of the burdens imposed upon industry by legislation are relative in their character. Whatever the actual pressure caused by a law may be, the degree in which it is greater or less in its exactions than similar laws in other states largely affects the employer's attitude toward it. In case the law in his state is more stringent in its provisions than in the majority of other states his opposition may be due to actual competitive disadvantage, to fear of such a condition or to disinclination, on general principles, to being placed at an apparent disadvantage.

Whatever the effect it may have upon his business, the New York employer has reason to believe that workmen's compensation is costing him considerably more than it costs his competitors in other states. Manual rates for eighty occupational classifications for New York were shown in an earlier section. In Table 56 manual rates for the same classifica-

TABLE 56: MANUAL RATES FOR EACH OF THE IMPORTANT NEW YORK CLASSIFICATIONS COMPARED WITH OTHER STATES

(Source: National Council on Compensation Insurance)

Code	Classification	Rates								
		New York	Con-necticut	Illinois	Indiana	Massa-chusetts	Michi-gan	New Jersey	Rhode Island	Wiscon-sin
	Contracting Classifications									
5022	Masonry (N.O.C.) ¹	7.33	3.73	2.26	2.51	4.28	2.41	2.50	2.18	2.67
5040	Iron and Steel Erection	27.45	15.21	12.36	12.63	14.82	12.83	9.60	10.13	14.88
5183	Plumbing (N.O.C.)	2.34	1.28	1.14	1.03	1.17	.98	1.10	.95	1.61
5190	Electrical Fixtures—installation	1.88	1.29	1.18	1.09	.92	.98	.99	.91	1.70
5204	Concrete Construction—Buildings	8.45	3.88	3.64	2.79	4.15	2.91	3.00	2.69	3.16
5401	Carpentry (N.O.C.)	18.71	5.88	7.30	7.05	5.48	7.78	4.50	3.26	2.95
5437	Carpentry—interior trim	2.46	1.14	.81	1.01	.98	.91	1.20	.79	2.95
5480	Plastering (N.O.C.)	4.71	1.73	1.43	1.59	1.82	1.39	1.25	1.26	1.85
5490	Painting and Decorating—interior	2.98	1.30	1.18	1.31	.97	1.11	. . .	.92	1.27
5502	Concrete Construction—Sidewalks and floors	2.91	1.46	.98	.93	1.37	.88	1.20	1.00	1.12
6041	Grading Land	3.19	1.56	1.71	1.49	1.42	1.34	1.25	1.14	2.83
6042	Street or Road Construction	5.56	3.95	3.31	3.63	3.73	2.91	2.90	2.13	3.09
	Manufacturing Classifications									
1421	Blast Furnaces	8.68	4.40	4.58	4.28	4.65	4.63	4.10	3.14	6.15
1701	Cement Manufacturing	5.74	3.49	4.19	4.68	3.72	3.19	2.90	2.40	3.92
1803	Stone Cutting and Polishing	2.59	1.79	1.71	2.06	2.04	1.59	1.35	1.29	3.75
2000	Bakeries	1.98	1.26	1.04	.84	1.19	1.08	1.25	.83	1.19
2014	Milling of Grain	3.11	1.78	2.03	1.68	1.96	1.63	1.75	1.28	2.74
2021	Sugar Refining	2.61	1.73	1.74	1.63	2.32	1.49	1.60	1.27	2.39
2040	Ice Cream Manufacturing	3.29	1.91	2.08	1.74	2.17	1.65	1.95	1.46	1.61
2041	Confectionery Manufacturing	1.84	1.13	.95	.96	.94	.91	1.35	.83	1.26
2042	Chocolate Manufacturing	1.84	1.13	.95	.96	.94	.91	1.35	.83	1.26
2065	Milk Products Manufacturing	2.93	1.39	1.43	1.33	1.96	1.21	1.95	1.05	1.61
2081	Butchering	4.28	2.52	2.51	2.81	2.17	2.13	2.20	1.90	2.75
2150	Ice Manufacturing	4.44	2.56	2.73	2.44	2.69	2.20	2.00	1.88	3.59

2220	Yarn or Thread Manufacturing	1.83	.48	.85	.79	.80	.72	.85	.45	1.17
2222	Cotton Spinning and Weaving	1.44	.48	.82	.71	.80	.68	.85	.45	1.12
2286	Wool Spinning and Weaving	1.01	.53	.70	.65	.66	.59	.52	.40	.91
2303	Silk Throwing and Weaving	.49	.33	.33	.31	.49	.27	.27	.25	.45
2362	Knit Goods Manufacturing	.69	.43	.43	.36	.47	.36	.40	.33	.52
2388	Embroidery Manufacturing	.48	.32	.33	.30	.35	.27	.34	.24	.45
2501	Clothing Manufacturing	.31	.23	.19	.22	.21	.16	.22	.16	.29
2553	Furnishing Goods Manufacturing	..	..	..	..	.32	..	..	..	..
2521	Shirt Manufacturing	.44	.28	.28	.22	.21	.22	.22	.22	.36
2532	Millinery Manufacturing	.31	.23	.19	.22	.24	.16	.22	.16	.32
2580	Laundries—Wet Wash	..	..	..	..	..	..	..	..	..
2581	Laundries (N.O.C.)	2.26	1.09	1.13	.83	1.10	.89	.87	.73	.94
2623	Tanning	2.51	1.36	1.31	1.31	1.38	1.38	1.20	.99	1.58
2660	Boot and Shoe Manufacturing	.88	.46	.46	.42	.40	.38	.45	.36	.61
2688	Leather Goods Manufacturing (N.O.C.)	.79	.57	.58	.53	.61	.48	.92	.43	.80
2730	Sash, Door and Assembled Mill Work Manufacturing	4.44	2.06	1.74	1.69	2.25	1.86	2.90	1.78	2.09
2731	Planing and Moulding Mills	4.44	2.93	2.48	2.53	2.25	3.04	2.90	2.21	3.89
2883	Furniture Manufacturing	2.56	1.60	1.78	1.41	1.32	1.33	1.90	1.19	1.72
2923	Piano Manufacturing	1.63	.87	.84	1.01	.88	.71	.84	.64	1.21
3002	Steel Works—Open Hearth or Bessemer	4.69	2.44	2.47	2.32	2.38	2.12	2.30	1.46	3.39
3081	Foundries—Iron	3.14	1.93	1.58	1.53	1.72	1.41	1.75	1.42	1.95
3146	Hardware Manufacturing	2.59	1.04	1.53	1.93	1.72	1.51	1.70	1.33	1.98
3180	Electric or Gas Manufacturing	1.84	.89	1.19	.93	1.09	.84	1.35	.76	1.33
3383	Jewelry Manufacturing	.51	.47	.47	.42	.38	.38	.36	.58	.64
3400	Metal Goods Manufacturing (N.O.C.)	5.86	1.58	2.88	2.78	2.98	3.38	3.80	2.30	3.02
3548	Printing or Bookbinding Machinery Manufacturing	1.98	1.19	.83	1.03	1.29	.93	1.40	.89	1.95
3631	Machine Shops—with Foundry	..	..	..	..	..	..	..	..	..
3632	Machine Shops—Excluding Foundries	2.93	1.29	1.71	1.33	1.29	1.51	1.40	1.10	1.95
3634	Valve Manufacturing	1.78	.91	.88	.96	1.19	.84	1.05	.79	1.16
3643	Electric Apparatus Manufacturing	2.01	.88	1.44	1.06	1.02	1.28	1.40	.97	1.54
3808	Automobile Manufacturing	1.89	1.31	1.13	.99	1.24	1.09	1.35	.99	1.39
3811	Automobile Body Manufacturing	2.74	1.73	1.56	1.54	1.65	.96	1.80	1.29	1.35
4029	Brick Manufacturing (N.O.C.)	3.84	1.71	2.09	1.79	1.76	1.67	..	1.35	2.50

TABLE 56: MANUAL RATES FOR EACH OF THE IMPORTANT NEW YORK CLASSIFICATIONS COMPARED WITH OTHER STATES—(Continued)

(Source: National Council on Compensation Insurance)

Code	Classification	Rates								
		New York	Con-necticut	Illinois	Indiana	Massa-chusetts	Michi-gan	New Jersey	Rhode Island	Wiscon-sin
Manufacturing Classifications:										
4240	Box Manufacturing—Solid Paper	1.91	1.06	1.28	1.13	.92	1.01	1.25	.93	1.74
4299	Printing and Lithographing	.98	.64	.56	.43	.57	.46	.59	.45	.86
4300	Printing	..	..	..	..	..	..	..	..	..
4302	Lithographing	..	..	..	..	..	..	..	..	..
4304	Newspaper Publishing	.98	.64	.56	.43	.57	.46	.59	.45	.86
4307	Bookbinding	.79	.44	.49	.41	.48	.37	.40	.34	.59
4410	Rubber Goods Manufacturing (N.O.C.)	2.94	1.44	1.66	1.63	2.17	1.49	1.30	1.25	1.81
4703	Corn Products Manufacturing	4.33	2.30	2.49	1.89	2.17	2.10	2.40	1.64	3.25
Miscellaneous Classifications										
0004	Florists	1.06	.69	.71	.66	.56	.60	.66	.51	.88
0006	Farm Labor	2.49	1.54	1.66	1.66	1.57	1.41	1.35	1.19	2.88
2702	Logging and Lumbering	17.23	6.80	5.88	6.78	6.51	7.25	5.50	4.05	7.22
7205	Drivers and Their Helpers	3.59	2.33	2.03	1.48	1.62	1.84	1.55	1.12	2.30
7219	Truckmen (N.O.C.)	8.21	3.48	3.03	3.63	4.10	3.68	4.00	2.74	4.59
7380	Chauffeurs and Their Helpers	2.48	1.36	1.31	1.19	1.38	.91	1.30	.83	1.69
8000	Department Stores	.63	.34	.39	.36	.37	.33	.33	.28	.46
8006	Grocery Stores—Retail	.79	.54	.51	.39	.61	.41	.45	.40	.59
8008	Clothing Stores—Retail	.31	.16	.18	.14	.14	.13	.17	.12	.20
8380	Automobile Dealers	2.13	1.34	1.23	1.04	.95	.86	1.35	.74	1.54
8742	Salesmen, Collectors and Messengers	.16	.33	.09	.19	.10	.16	.14	.11	.27
8810	Clerical Office Employees	.06	.06	.06	.07	.05	.06	.05	.06	.06
9040	Asylums or Hospitals	1.41	.93	.69	.68	.87	.74	.69	.61	.95
9050	Hotels	1.41	.93	.69	.68	.87	.74	.69	.61	.95
9071	Restaurants	1.04	.74	.63	.51	.92	.48	.69	.50	.74
9150	Theatres—Stage Hands	.94	.47	.48	.46	.45	.42	.61	.34	.20

cations are shown for eight leading industrial states in comparison with those for New York. In these states the rates are made in the same manner as in New York, and the classifications are identical. In a few instances certain classifications have been discontinued in some states, and consequently no rate is shown.

The high New York rates stand out in bold relief when compared with similar rates in other states. For example, iron and steel erection carries a rate of \$27.45 in New York, as against \$9.60 in the neighboring state of New Jersey. The machine shop rate for New York is \$2.93; the Wisconsin rate of \$1.95 shows the closest approach to New York, while the Rhode Island rate is as low as \$1.10. Below are listed the very few cases in which rates in other states are higher than in New York. The very smallness of their number emphasizes the high level of New York rates.

Code Number	Classification	New York Rates	Other State Rates
1803	Stone Cutting and Polishing	2.59	Wisconsin 3.75
2532	Millinery Manufacturing	.31	" .32
2688	Leather Goods Manufacturing (N.O.C.)	.79	New Jersey .92
3383	Jewelry Manufacturing	.51	Wisconsin .64
0006	Farm Labor	2.49	" 2.88
8742	Salesmen, Collectors and Messengers	.16	Connecticut .33
8810	Clerical Office Employees	.06	Indiana .07

Two leading industrial states, which are among the chief competitors of New York, are Pennsylvania and Ohio. Rates in these states are established by their own rate setting boards and not by the National Council on Compensation Insurance, and consequently they are not included in Table 56. They are, however, compared with the New York rates in Table 57 which shows at a glance that in every case New York rates are far above those in either Pennsylvania or Ohio. The National Council on Compensation Insurance, in preparing this table, used the present manual rate in New York, the present manual rate in Ohio and the manual rate which became effective in Pennsylvania on January 1, 1927. In certain cases the Ohio and Pennsylvania classifications, for which rates are shown, are not identical with the New York classification. The Pennsylvania rate for "Box Manufactur-

280 WORKMEN'S COMPENSATION IN NEW YORK

TABLE 57: PRESENT NEW YORK MANUAL RATES FOR IMPORTANT NEW YORK CLASSIFICATIONS COMPARED WITH RATES IN OHIO AND PENNSYLVANIA

(Source: National Council on Compensation Insurance)

Code Number			Classification	Rates		
New York	Ohio	Pennsylvania		New York	Ohio	Pennsylvania
Contracting Classifications						
5022	5022	653	Masonry (N.O.C.) ¹	7.33	2.40	1.25
5040	5040	655	Iron and Steel Erection	27.45	7.80	5.50
5183	5437	663	Plumbing (N.O.C.)	2.34	.75	.80
5190	5190	661	Electrical Fixtures—installation	1.88	.55	.65
5204	5204	654	Concrete Construction—buildings	8.45	3.50	2.45
5401	5402	651	Carpentry (N.O.C.)	18.71	1.25	1.15
5437	5437	651	Carpentry—interior trim	2.46	.75	1.15
5480	5437	669	Plastering (N.O.C.)	4.71	.75	.70
5490	5490	665	Painting and Decorating—interior	2.98	.70	1.40
5502	5502	654	Concrete Constr.—sidewalks and floors	2.91	1.30	2.45
6041	6040	..	Grading Land	3.19	1.25	..
6042	6042	601	Street or Road Construction	5.56	3.30	1.80
Manufacturing Classifications						
1421	1421	401	Blast Furnaces	8.68	1.60	1.80
1701	1651	501	Cement Manufacturing	5.74	2.25	1.20
1803	1803	505	Stone Cutting and Polishing	2.59	..	.95
2000	2000	105	Bakeries	1.98	.70	.70
2014	2014	101	Milling of Grain	3.11	1.20	1.20
2021	2021	103	Sugar Refining	2.61	.60	1.05
2040	2040	110	Ice Cream Manufacturing	3.29	.60	1.20
2041	2041	107	Confectionery Manufacturing	1.84	.90	.70
2042	2042	107	Chocolate Manufacturing	1.84	1.10	.70
2065	2062	109	Milk Products Manufacturing	2.93	1.00	.90
2081	2081	111	Butchering	4.28	1.30	1.15
2150	2150	114	Ice Manufacturing	4.44	1.30	1.00
2220	2220	..	Yarn or Thread Manufacturing	1.83	.55	..
2221	2222	132	Cotton Spinning and Weaving	1.44	.70	.37
2286	2286	132	Wool Spinning and Weaving	1.01	.90	.37
2303	2303	133	Silk Throwing and Weaving	.49	.40	.18
2362	2362	135	Knit Goods Manufacturing	.69	.55	.15
2388	2388	136	Embroidery Manufacturing	.48	.15	.37
2501	2501	161	Clothing Manufacturing	.31	.10	.18
2521	2521	..	Shirt Manufacturing	.44	.20	..
2532	2532	161	Millinery Manufacturing	.31	.15	.18
2581	2581	141	Laundries (N.O.C.)	2.26	1.00	.50
2623	2623	201	Tanning	2.51	2.20	.70
2660	2660	204	Boot and Shoe Manufacturing	.88	.25	.25
2688	2688	205	Leather Goods Manufacturing (N.O.C.)	.79	.30	.50

¹N. O. C. means "not otherwise classified."

TABLE 57: PRESENT NEW YORK MANUAL RATES FOR IMPORTANT NEW YORK CLASSIFICATIONS COMPARED WITH RATES IN OHIO AND PENNSYLVANIA—(Continued)

(Source: National Council on Compensation Insurance)

Code Number			Classification	Rates		
New York	Ohio	Pennsylvania		New York	Ohio	Pennsylvania
Manufacturing Classifications						
2730	2730	..	Sash, Door and Assembled Mill Work Mfg.	4.44	1.30	..
2731	2731	305	Planing and Moulding Mills	4.44	2.15	1.60
2883	2883	323	Furniture Manufacturing	2.56	.80	.80
2923	2923	323	Piano Manufacturing	1.63	.80	.80
3002	3000	404	Steel Works—Open hearth or Besemer	4.69	1.00	1.55
3081	3081	425	Foundries—Iron	3.14	1.35	1.15
3146	3146	445	Hardware Manufacturing	2.59	.90	.70
3180	3180	445	Electric or Gas Fixtures Manufacturing	1.84	.60	.70
3383	3383	458	Jewelry Manufacturing	.51	.10	.18
3400	3400	455	Metal Goods Manufacturing (N.O.C.)	5.86	1.00	2.25
3548	..	..	Printing or Bookbinding Machinery Mfg.	1.98	..	..
3632	3632	461	Machine Shops—Excluding foundries	2.93	.95	.95
3634	3634	..	Valve Manufacturing	1.78	.70	..
3643	3643	473	Electric Apparatus Manufacturing	2.01	.75	.70
3808	3808	463	Automobile Manufacturing	1.89	.80	.75
3811	3816	451	Automobile Body Manufacturing	2.74	.60	.85
4029	4029	512	Brick Manufacturing (N.O.C.)	3.84	1.60	1.20
4240	4240	257	Box Manufacturing—Solid Paper	1.91	.60	.90
4299	4300	281	Printing and Lithographing	.98	.20	.28
4304	4304	281	Newspaper Publishing	.98	.22	.28
4307	4350	281	Bookbinding	.79	.30	.28
4410	4410	225	Rubber Goods Manufacturing (N.O.C.)	2.94	.75	.65
4703	4703	..	Corn Products Manufacturing	4.33	1.20	..
Miscellaneous Classifications						
0004	0004	001	Florists	1.06	.55	.40
0006	0006	0006	Farm Labor	2.49	2.00	1.00
2702	2702	301	Logging and Lumbering	17.23	6.00	1.00
7205	7380	805	Drivers and Their Helpers	3.59	1.40	1.50
7213	..	811	Truckmen (N.O.C.)	8.21	..	2.35
7380	7380	807	Chauffeurs and Their Helpers	2.48	1.40	1.05
8000	8000	914	Department Stores	.63	.20	.23
8006	8017	917	Grocery Stores—retail	.79	.45	.40
8008	8024	918	Clothing Stores—retail	.31	.15	.15
8380	8380	465	Automobile Dealers	2.13	.80	.70
8742	8747	951	Salesmen, Collectors and Messengers	.16	.13	.13
8810	8810	953	Clerical Office Employees	.06	.03	.05
9040	9040	961	Asylums or Hospitals	1.41	.65	.45
9050	9050	973	Hotels	1.41	.45	.55
9071	9071	975	Restaurants	1.04	.80	.50
9150	9154	967	Theatres—Stage Hands	.94	.20	.20
9154	9154	967	Theatres—Managers	.81	.20	.20

282 WORKMEN'S COMPENSATION IN NEW YORK

ing—Solid Paper” would apply equally well to “Folding Paper Box Manufacturing,” since there is only one paper box classification used in Pennsylvania. Consequently, the table shows the Ohio and Pennsylvania classification code numbers to which the exhibited rates apply. This and the preceding tables establish conclusively the fact that, among the leading industrial states, the rates effective in New York State are easily the highest.

Comparative Benefit Cost by States

A more inclusive comparison of the cost of compensation in New York State with that of other states is made possible by means of figures shown in Table 58. This comparison of benefits under the workmen's compensation laws of the various states and territories has been made as of January 1, 1927, by the National Council on Compensation Insurance. Throughout the table the figures for the various states are in relation to New York as \$1,000. They are, in effect, index numbers. Five types of disability are shown, together with medical and hospital benefits, while the last column provides a composite comparison of all benefit costs.

These figures have been calculated by means of the American Accident Table on the basis of 100,000 injury cases tabulated according to type and extent of disability. By applying the benefit schedules of the various laws to the injury cases for each type of disability, sums were obtained which represent the cost for each type of disability. The ratios of these sums to the amounts calculated for New York are the figures given in the table. Although by this calculation a fairly dependable comparison of the benefit schedules of the various laws is obtained, it should be borne in mind that only differences in the statutory provisions of the laws as regards benefits are taken into account and that, in actual practice, other elements which enter into the cost of compensation might show a quite different relationship. This fact will be brought out in a later section.

There are certain limitations which must be noted as applying to certain states given in the table. The Oklahoma compensation law specifically excludes payments in fatal cases. Since these cases are covered by the joint liability

TABLE 58: COMPARATIVE BENEFIT COST OF VARIOUS WORKMEN'S COMPENSATION LAWS AS OF JANUARY 1, 1927

(Source: National Council on Compensation Insurance)

State	Death	Perma- nent Total	Major Perma- nent Partial	Minor Perma- nent Partial	Tempo- rary Total	Medical and Hospit- als	All Benefits	Date of Lapse Law
	\$1,000	\$1,000	\$1,000	\$1,000	\$1,000	\$1,000	\$1,000	
New York.....	357	280	449	586	637	821	1,000	1- 1-25
Alabama.....	596	446	776	640	816		585	1- 1-20
Alaska.....	1,147	1,065	851	945	1,356	957	544	8- 2-23
Arizona.....	498	647	669	760	959	1,000	803	11- 2-25
California.....	420	672	562	380	563	877	583	7-24-23
Colorado.....	488	394	618	713	852	1,000	752	5- 1-25
Connecticut.....	345	245	511	617	673	790	599	7- 1-25
Delaware.....	383	260	513	686	720	772	625	4- 1-21
Georgia.....	447	276	822	851	895	1,000	811	8-27-25
Hawaii.....	540	528	572	485	801	1,000	703	5- 2-23
Idaho.....	474	477	627	809	834	1,000	766	5- 6-21
Illinois.....	438	305	617	713	705	877	678	7- 1-25
Indiana.....	497	324	540	562	672	784	619	4-25-25
Iowa.....	461	335	451	562	789	833	637	10-28-24
Kansas.....	467	337	459	577	812	877	658	5-26-17
Kentucky.....	456	405	621	678	994	944	762	6-16-26
Louisiana.....	465	370	621	1,263	913	784	845	7-28-26
Maine.....	595	316	718	771	1,127	981	854	7-11-25
Maryland.....	534	272	576	504	936	772	678	2-12-25
Massachusetts.....	488	372	496	648	795	957	696	7- 2-26
Michigan.....	736	553	903	939	1,053	1,000	921	7-29-21
Minnesota.....	649	615	700	967	1,207	1,000	927	4- 8-25
Missouri.....	576	356	483	405	615	963	622	1- 9-27
Montana.....	585	704	757	780	861	1,000	813	3-10-25
Nebraska.....	916	778	665	763	1,127	988	909	7- 8-21
Nevada.....	376	233	451	296	950	735	588	3-21-25
New Hampshire.....	473	922	683	868	924	877	792	5- 4-23
New Jersey.....	370	327	428	393	564	667	497	1- 1-26
New Mexico.....	1,012	1,005	933	877	1,265	1,000	1,031	6-11-21
North Dakota.....	702	965	710	810	931	938	839	7- 1-25
Ohio.....	449	452	670	788	1,008	938	792	7-14-25
Oklahoma.....	775	537	503	564	1,049	938	787	6-28-23
Oregon.....	364	293	596	726	592	802	621	5-28-25
Pennsylvania.....	355	215	469	420	720	809	573	7-11-23
Porto Rico.....	372	309	490	490	810	877	631	10-12-21
Rhode Island.....	365	193	579	708	1,098	889	750	4- 1-26
South Dakota.....	504	286	422	534	675	772	592	7- 1-25
Tennessee.....	652	369	602	761	897	883	767	6-12-23
Texas.....	562	754	633	545	998	969	773	7- 1-23
Utah.....	289	208	530	496	720	679	556	6-12-23
Vermont.....	404	265	494	610	611	926	622	5-12-25
Virginia.....	880	619	560	540	742	1,000	753	6- 1-25
Washington.....	687	868	724	915	857	939	850	7- 1-23
West Virginia.....	695	743	1,109	909	1,030	969	946	7-24-26
Wisconsin.....	375	341	439	298	952	914	631	7- 1-25
Wyoming.....								4- 1-25

and compensation policies, the experience differential used in the making of rates is given in the death column. The

284 WORKMEN'S COMPENSATION IN NEW YORK

values for the states and territories with which the National Council does not maintain close contact are in some cases subject to greater limitations than those submitted for the other states. This group includes the states which have independent rate making organizations or exclusive state insurance funds. Because of the fact that greater difficulties have been encountered in evaluating these laws and since the National Council does not make rates for these states and territories, mere approximations have been introduced. In Washington, for example, the benefits payable under the compensation law are independent of the wage-earning capacity of the injured or deceased, and the values shown in the table for that particular state are necessarily more limited because of the very nature of the law.

It may be argued that the accident distribution will vary in different states. While this is true, the comparison of the compensation benefits of one state with those of another cannot be definitely determined until the benefits are applied to a common set of conditions which cover the whole range of accident experience. An example may serve to clarify this point. The Massachusetts law provides for a weekly maximum of \$17, while the Ohio maximum is \$18.75. In the first state, an employee disabled more than four weeks receives compensation for the waiting period of one week, but in Ohio no benefits are paid for the first week. While the weekly maximum provided in the Ohio law is more liberal in cases up to four weeks of disability, the sum of the total benefits received for four weeks would be \$56.25, as against \$68 in Massachusetts, if the employee received the maximum amount per week. The benefits would become practically equal at the end of the eleventh week, but thereafter the Ohio benefits would be more liberal. Thus benefit schedules in the various laws may be more liberal under certain conditions and less under others, and it would be manifestly unfair to compare the various laws except under common conditions of accident distribution.

The figures showing the relative cost of medical and hospital service are not so reliable as those for the several types of disability, because certain laws, while limiting the time of medical and similar service, provide that additional service

may be given at the discretion of the compensation commission. It is, of course, impossible to allow exactly for this provision in calculating the ratio. For the states indicated as having a ratio of 1000 or close to this mark, the limitation has no effect. The column marked "All benefits" has been calculated by weighting the other six columns on the basis of the distribution of the national experience as given in Schedule "Z" for the several items. Since the distribution of accidents by type of injury varies from state to state, the national distribution would be somewhat different from that of any particular state, so that the comparison of the cost for "all injuries" is correct only in a general way.

Arizona and North Dakota are shown as having more liberal death benefit schedules than New York. Neither Arizona nor North Dakota is an industrial state, and from the standpoint of the number of accidents they are relatively unimportant. There were only 40 fatal industrial accidents in Arizona in 1923-24, according to the United States Bureau of Labor Statistics, while the entire compensable accidents of North Dakota for the fiscal year 1925-26 totaled 21 deaths, 64 permanent partial disability cases and 1,388 temporary cases over one week in duration.

The difference between the death benefits of these three states is accounted for in Table 59 as being due to the various percentages allowed dependents. In addition, the fact that the Arizona law specifies no weekly maximum makes for greater liberality. In each state the maximum limit for all dependents is 66 $\frac{2}{3}$ % of the wage. The maximum basic wage on which the percentage is calculated is \$150 per month in New York and \$30 per week in North Dakota.

In permanent total injury benefits Arizona is more liberal than New York State. In this instance the difference is about 5% and is the result of the fact that no limit is placed on the weekly maximum in Arizona, while the New York law fixes a limit of \$20.¹ A comparison of permanent total disability benefits in Arizona and New York is given in Table 60.

Wisconsin is the only state which gives a higher benefit for major permanent partial disabilities than New York. The Wisconsin law provides not only for a higher scale, in

¹ See footnote, p. 22.

286 WORKMEN'S COMPENSATION IN NEW YORK

TABLE 59: COMPARATIVE DEATH BENEFITS IN ARIZONA, NORTH DAKOTA AND NEW YORK STATE

Total Dependents	Arizona (\$1,138)	North Dakota (\$1,013)	New York (\$1,000)
Widow or widower—no children....	35%	35%	30%
“ “ “ “ and 1 child....	50	45	40
“ “ “ “ 2 children....	65	55	50
“ “ “ “ 3 (or more children)....	66½	65	60
“ “ “ “ 4 or more	..	66½	66½
Orphans—1.....	25	25	15
“ —2.....	40	35	30
“ —3.....	55	45	45
“ —4 (or more in Arizona)....	66½	55	60
“ —5 (or more in New York)....	..	65	66½
“ —6 or more.....	..	66½	..
Parents—1.....	25	25	25
“ —2.....	40	40	50
Brothers or sisters—1.....	25	20	15 (each)
“ “ “ —2 or more.....	35	30	..
Basic wage.....	..	Max. \$30 a wk. Min. \$18	Max. \$150 Month
Benefit Period			
Widow or widower.....	Death or re-marriage	Death or re-marriage	Death or re-marriage
Remarriage widow.....	Lump sum equal to 2 yrs.' compensation	Lump sum of 156 weeks' compensation	Lump sum of 2 yrs.' compensation (for widower also)
Children.....	Until 18 or marriage	Until 18 or marriage	Until 18
Parents.....	During dependency	During dependency	During dependency
Brothers and sisters.....	Until 18	Until 18 but not more than 8 years	Until 18
Partial dependents.....	100 months (fixed by commission)		During dependency
No dependents.....	Expenses of burial (\$150) and \$850 to state	Burial expenses \$150	Burial expenses (\$200) and \$1,600 to state

TABLE 60: PERMANENT TOTAL DISABILITY BENEFITS IN ARIZONA AND NEW YORK

	Arizona	New York
Per cent of wages.....	65%	66½%
Maximum per week.....	..	\$20
Minimum per week.....	..	8
Maximum amount.....	Life	During continuance
Maximum period.....	Life	During continuance

view of the greater number of weeks given a younger person, but also for compensation during the healing period. Table 61 gives a comparison of major permanent partial disability benefits in Wisconsin and New York. A sliding scale, according to the age of the injured man, is used in Wisconsin. In New York State, compensation for permanent partial disability resulting from specified dismemberments is in all cases payable for the number of weeks indicated in column (1). If disability continues for a longer period than the number of weeks in column (2), compensation for the period of temporary total disability in excess of the number of weeks indicated in column (2) is given up to \$3,500.

TABLE 61: MAJOR PERMANENT PARTIAL DISABILITY BENEFITS IN WISCONSIN AND NEW YORK

Disability	Wisconsin				New York			
	Age	Per Cent of Wages	Weekly Maximum	Number of Weeks	Per Cent of Wage	Weekly Maximum	Number of Weeks	
							1	2
Loss of hand	30	21.67	\$6.07	1,000	66⅔%	\$20	244	32
	35	23.56	6.60	910				
	40	25.46	7.13	820				
	45	27.35	7.66	730				
	50	29.25	8.19	640				
	70	36.83	10.31	280				
Loss of arm at shoulder	30	32.50	9.10	1,000	66⅔%	20	312	32
	35	35.34	9.90	910				
	40	38.19	10.69	820				
	45	41.03	11.49	730				
	50	43.88	12.29	640				
	70	55.25	15.47	280				
Loss of eye	30	13.00	3.60	1,000	60⅓%	20	160	20
	35	14.14	3.96	910				
	40	15.28	4.28	820				
	45	16.41	4.60	730				
	50	17.55	4.91	640				
	70	22.10	6.19	280				

In Maine the reason for the high benefit in minor permanent partial (\$1,259 as compared with New York's \$1,000) is found not in the weekly percentage, the maximum, or in the number of weeks, but in the clauses which allow for a healing period of three hundred weeks, in cases of infection and so on. These clauses also hold true for major permanent injuries, but in these cases the three hundred weeks healing period is not so important, since New York allows a

288 WORKMEN'S COMPENSATION IN NEW YORK

specific award of three hundred and twelve weeks for the loss of an arm at the shoulder. The ruling made in 1920 by the Maine Commission which makes compensable, in case of surgical amputation some time after the accident, the intervening period of disability in addition to the specific period allowed in the schedule has proved to be very costly.

Ten states are shown to have higher benefits than New York for temporary total disability. In figuring this item, the waiting period is one of the greatest factors. A glance at Table 62 shows that in some states the waiting period is shorter than in New York, and that the retroactive clause operates sooner. Another, but less important element in the total cost of these benefits, is New York's low maximum amount of \$3,500.¹ In Nevada an additional allowance of \$10 per month may be added for total dependents if there are any. In Oregon the sliding scale of wage percentages and monthly maximum and minimum payments depends on conjugal condition of the injured person.

TABLE 62: COMPENSATION FOR TEMPORARY TOTAL DISABILITY IN TWELVE STATES COMPARED

	Per Cent of Wages	Weekly Maximum	Weekly Minimum	Total Payment Limit	Maximum Period	Waiting Period	Waiting Period Retroactive at
Arizona	65	..	..	..	100 mos.	7 days	2 weeks
North Dakota.	66 $\frac{2}{3}$	\$20	\$6	..	cont.	7 days	7 days
Missouri	66 $\frac{2}{3}$	20	6	..	400 wks.	3 days	4 weeks
Nevada	60	72 ¹	30 ¹	\$7,200	100 mos.	7 days	7 days
Maryland	66 $\frac{2}{3}$	18	8	3,750	6 yrs.	3 days	not retroactive
South Dakota.	55	15	7.50	..	6 yrs.	None	
Minnesota . . .	66 $\frac{2}{3}$	20	8	..	300 wks.	1 week	4 weeks
Oregon	40-66 $\frac{2}{3}$	55-97 ¹	30-40 ¹	..	..	None	
Wisconsin . . .	65	18.20	6.83	4 x annual wage	cont.	1 week	3 weeks
Oklahoma . . .	66 $\frac{2}{3}$	18	8	..	300 wks.	5 days	not retroactive
Utah	60	16	7	5,000	6 yrs.	3 days	not retroactive
New York . . .	66 $\frac{2}{3}$	20	8	3,500	cont.	1 week	7 weeks

¹ Monthly allowance.

It has been shown that so far as statutory benefits are concerned a number of states are more liberal than New York

¹ See footnote, p. 22.

in the matter of temporary disabilities and that eight states are as liberal as New York in medical and hospital provisions. It is significant that, with the exception of Wisconsin, the states which in one feature or another appear to be more liberal than New York are not primarily either industrial or competing states. When all types of benefits are combined, only Arizona and North Dakota are shown as being theoretically slightly more liberal than New York.

Since New York is primarily a great industrial state and finds itself in constant competition with other leading industrial states, it is of particular significance to compare New York compensation costs with those in the chief competitive states. Since it is necessary to confine such a comparison within reasonable dimensions, temporary disabilities have been selected for special attention as they are, numerically, the most important disability cases. In New York State over 80% of the cases compensated in the fiscal year 1925-26 were of this nature.

The statutory benefits provided by the workmen's compensation acts of the various states for cases of temporary disability are generally expressed in the form of a weekly minimum, a weekly maximum and, between these limits, as a variable amount consisting of a fixed percentage of the weekly wage. If the weekly wage is below the specified minimum benefit, however, the full wage is payable, but no more.

In New York the weekly minimum benefit is \$8.00, the maximum is \$20.00¹ and, within these limits, the benefit is 66 $\frac{2}{3}$ % of the wage. The table in the lower right-hand corner of Chart 15 gives the corresponding data for ten other industrial states. In Illinois separate scales of benefits are provided according to the number of dependents (indicated in the table by figures in parentheses). The table, however, does not furnish a ready basis for comparing the liberality of the statutory benefits in the several states at different wage levels.

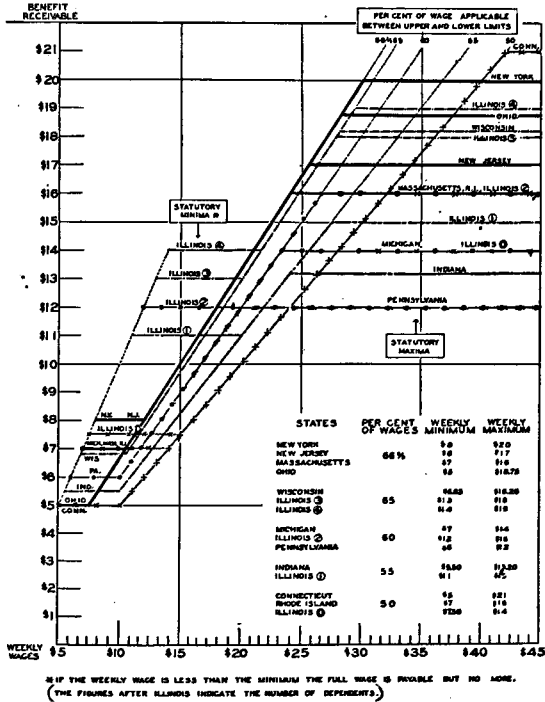
The chart itself has been designed in order to afford a ready visualization of the comparative weekly benefits receivable on the basis of wages from \$5.00 to \$45.00, this including the entire range within which the comparison is difficult to trace by means of the table alone.

¹ See footnote, p. 22.

290 WORKMEN'S COMPENSATION IN NEW YORK

To those familiar with "graphs," the chart requires little explanation, but a brief description will make the principle

CHART 15: COMPENSATION PAID FOR TEMPORARY DISABILITIES IN VARIOUS STATES



of its construction quite obvious. For any given wage represented on the horizontal scale, the weekly amount of com-

compensation, determined in accordance with the statutory provisions of the state, is represented by a point measured along the vertical scale marked "Benefit Receivable." It can be mathematically demonstrated that the complete path for each state consists of four sections which we will illustrate by considering New York. The minimum of \$8 for New York does not apply if the wage is under that figure, so that the "curve" for the state begins with the dotted oblique line which shows that if the wage is \$5 the benefit is also \$5, and continues in like manner up to the \$8 benefit corresponding to \$8 wages. There the curve becomes the heavy horizontal line shown in the diagram and continues at that level until the \$12 wage is reached, after which point the \$8 minimum benefit is exceeded by the $66\frac{2}{3}\%$ of wages provided by the law. Here the variable benefit begins, being represented by the heavy oblique line which is so inclined that the reading along the benefit scale is always $66\frac{2}{3}\%$ of the reading along the wage scale. At \$30 wages, $66\frac{2}{3}\%$ is \$20, or the maximum receivable under the law; hence the balance of the diagram for New York consists of a horizontal line at the \$20 level.

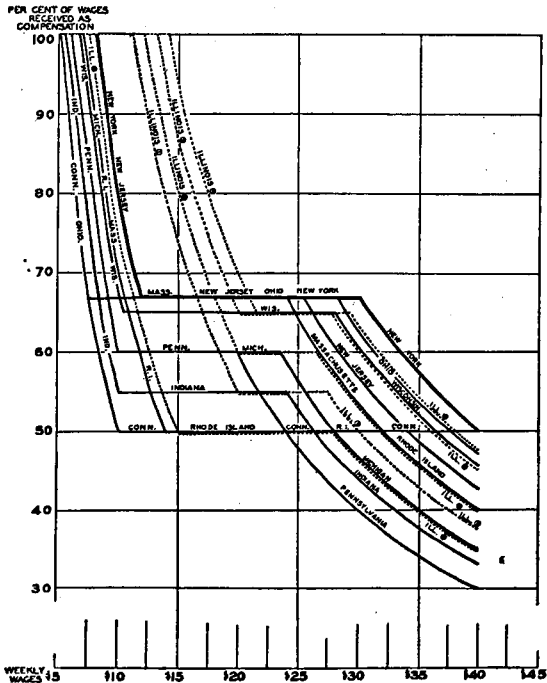
In general, the complete curve for any state represented in the chart consists of four sections; (1) an oblique line representing the 100% benefit receivable as long as the wage is below the statutory minimum; (2) a horizontal line representing the minimum and continuing until the wage is reached at which the variable benefit begins; (3) an oblique line representing the sliding scale of benefits, the line being so inclined that the reading along the benefit scale is the specified percentage of the reading along the wage scale; (4) a final horizontal line which represents the maximum receivable.

Although 15 different rates of compensation are represented in the chart, owing to duplications, there are only 11 horizontal lines denoting minimum benefits, 12 horizontal lines representing maximum benefits, and only 5 oblique lines representing statutory percentages. These 5 oblique lines are indicated in distinctive rulings, so that in order to trace the curve for any state it is only necessary to pick out its oblique percentage line and the corresponding horizontal lines which extend from it.

292 WORKMEN'S COMPENSATION IN NEW YORK

The chart illustrates the unique manner in which the benefits in Illinois change with the number of dependents. It illustrates the wide dissimilarities in the statutory benefits

CHART 16: PER CENT OF WAGES PAID FOR TEMPORARY DISABILITY IN VARIOUS STATES



receivable in several important industrial states and indicates precisely the nature of the "spread" between such benefits at various wage levels.

The companion chart to the one just described, No. 16, is based upon the identical data carried one step further, namely, the weekly benefits receivable as compensation in cases of temporary disability are plotted not in dollars but in percentages of the weekly wages.

In New York, for example, the curve begins with the 100% receivable as long as the weekly wage is less than the statutory minimum of \$8.00. Then the curve falls rapidly to 66⅔% at \$12.00 wages to \$30.00 wages, these being the limits between which the statutory percentage remains constant. At \$30.00 wages the statutory maximum benefit of \$20.00 a week begins to operate, so that the actual percentage receivable declines as the wage increases, and the curve drops correspondingly, reaching 50% at \$40.00 wages. If the wage scale were sufficiently extended to the right the percentage would be 33⅓% at \$60 wages, 25% at \$80.00 wages, and so on, the numerator of the fraction, from which the percentage is computed, constantly remaining at \$20.00

In general, the complete percentage curve for any state represented in the chart consists of four sections: (1) a horizontal line at 100% representing the full wage receivable as long as the wage is below the statutory minimum; (2) a downward curve representing the declining percentage relation of the statutory minimum benefit to the weekly wage, and continuing until the weekly wage is reached at which the sliding scale of benefits begins; (3) a horizontal line at the level of the statutory fixed percentage and remaining so until the wage is reached at which the statutory maximum begins to operate; (4) a downward curve representing the constantly declining percentage of wages receivable as compensation after the maximum receivable has been passed.

Table 63 has been prepared to show the relative liberality of compensation benefits for temporary disabilities of varying duration in the leading industrial states. A number of wage levels has been selected, ranging from \$20 to \$42 per week, and the compensation benefits of the several states are shown in index numbers in relation to New York as 1000. The first column shows the amount of weekly benefit at the various wage levels according to the provisions of each of the laws. Since the retroactive clause exerts considerable

TABLE 63: COMPARISON OF BENEFITS OF COMPETITIVE STATE LAWS IN TEMPORARY DISABILITY CASES AT SELECTED WAGE LEVELS AND FOR VARIOUS WEEKS OF DISABILITY

Weekly Wage	Weekly Benefit	10 Days	2 Weeks	3 Weeks	4 Weeks	5 Weeks	6 Weeks	7 Weeks	8 Weeks	9 Weeks	10 Weeks	11 Weeks	12 Weeks	13 Weeks	Limit	
\$20.00 per week																
Connecticut.....	\$10.00	750	750	750	750	938	900	875	750	750	750	750	750	750	750	..
Illinois (Min. 50%).....	10.00	750	750	750	1,000	938	900	875	750	750	750	750	750	750	750	..
Illinois (Max. 65%).....	13.00	975	975	975	1,300	1,219	1,170	1,138	975	975	975	975	975	975	975	..
Indiana.....	11.00	825	825	825	825	825	825	825	722	733	743	750	756	762	825	
Massachusetts.....	13.33	1,000	1,000	1,000	1,000	1,250	1,200	1,167	1,000	1,000	1,000	1,000	1,000	1,000	1,000	..
Michigan.....	12.00	900	900	900	900	900	1,080	1,050	900	900	900	900	900	900	900	..
New Jersey.....	13.33	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	..
New York.....	13.33	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	..
Ohio.....	13.33	1,000	1,000	1,000	1,000	1,000	1,000	875	889	900	909	917	923	923	1,000	
Pennsylvania.....	12.00	..	600	750	800	825	840	850	750	767	780	791	800	808	900	
Rhode Island.....	10.00	750	750	750	750	938	900	875	750	750	750	750	750	750	750	..
Wisconsin.....	13.00	975	975	975	1,300	1,219	1,170	1,138	975	975	975	975	975	975	975	..
\$24.00 per week																
Connecticut.....	12.00	750	750	750	750	938	900	875	750	750	750	750	750	750	750	..
Illinois (Min. 50%).....	12.00	750	750	750	1,000	938	900	875	750	750	750	750	750	750	750	..
Illinois (Max. 65%).....	15.60	975	975	975	1,300	1,219	1,170	1,138	975	975	975	975	975	975	975	..
Indiana.....	13.20	825	825	825	825	825	825	825	722	733	743	750	756	762	825	
Massachusetts.....	16.00	1,000	1,000	1,000	1,000	1,250	1,200	1,167	1,000	1,000	1,000	1,000	1,000	1,000	1,000	..
Michigan.....	14.00	875	875	875	875	875	1,050	1,021	875	875	875	875	875	875	875	..
New Jersey.....	16.00	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	..
New York.....	16.00	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	..
Ohio.....	16.00	1,000	1,000	1,000	1,000	1,000	1,000	875	889	900	909	917	923	923	1,000	
Pennsylvania.....	12.00	..	500	625	667	688	700	708	625	639	650	659	667	673	750	
Rhode Island.....	12.00	750	750	750	750	938	900	875	750	750	750	750	750	750	750	..
Wisconsin.....	15.60	975	975	975	1,300	1,219	1,170	1,138	975	975	975	975	975	975	975	..
\$25.50 per week																
Connecticut.....	12.75	750	750	750	750	938	900	875	750	750	750	750	750	750	750	..
Illinois (Min. 50%).....	12.75	750	750	750	1,000	938	900	875	750	750	750	750	750	750	750	..
Illinois (Max. 65%).....	16.57	975	975	975	1,300	1,218	1,170	1,137	975	975	975	975	975	975	975	..

TABLE 63: COMPARISON OF BENEFITS OF COMPETITIVE STATE LAWS IN TEMPORARY DISABILITY CASES AT SELECTED WAGE LEVELS AND FOR VARIOUS WEEKS OF DISABILITY—(Continued)

Weekly Wage	Weekly Benefit	10 Days	2 Weeks	3 Weeks	4 Weeks	5 Weeks	6 Weeks	7 Weeks	8 Weeks	9 Weeks	10 Weeks	11 Weeks	12 Weeks	13 Weeks	Limit	
\$32.00 per week																
Connecticut.....	16.00	800	800	800	800	1,000	960	933	800	800	800	800	800	800	800	..
Illinois (Min. 50%).....	14.00	700	700	700	933	875	840	817	700	700	700	700	700	700	700	..
Illinois (Max. 65%).....	19.00	950	950	950	1,267	1,188	1,140	1,108	950	950	950	950	950	950	950	..
Indiana.....	13.20	660	660	660	660	660	660	660	578	587	594	600	605	609	660	
Massachusetts.....	16.00	800	800	800	800	1,000	960	933	800	800	800	800	800	800	800	..
Michigan.....	14.00	700	700	700	700	700	840	817	700	700	700	700	700	700	700	..
New Jersey.....	17.00	850	850	850	850	850	850	850	850	850	850	850	850	850	850	..
New York.....	20.00	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	..
Ohio.....	18.75	938	938	938	938	938	938	938	820	833	844	852	859	865	938	
Pennsylvania.....	12.00	..	400	500	533	550	560	567	500	511	520	527	533	538	600	
Rhode Island.....	16.00	800	800	800	800	1,000	960	933	800	800	800	800	800	800	800	..
Wisconsin.....	18.20	910	910	910	1,213	1,138	1,092	1,062	910	910	910	910	910	910	910	..
\$42.00 per week																
Connecticut.....	21.00	1,050	1,050	1,050	1,050	1,313	1,260	1,225	1,050	1,050	1,050	1,050	1,050	1,050	1,050	..
Illinois (Min. 50%).....	14.00	700	700	700	933	875	840	817	700	700	700	700	700	700	700	..
Illinois (Max. 65%).....	19.00	950	950	950	1,267	1,188	1,140	1,108	950	950	950	950	950	950	950	..
Indiana.....	13.20	660	660	660	660	660	660	660	578	587	594	600	605	609	660	
Massachusetts.....	16.00	800	800	800	800	1,000	960	933	800	800	800	800	800	800	800	..
Michigan.....	14.00	700	700	700	700	700	840	817	700	700	700	700	700	700	700	..
New Jersey.....	17.00	850	850	850	850	850	850	850	850	850	850	850	850	850	850	..
New York.....	20.00	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	..
Ohio.....	18.75	938	938	938	938	938	938	938	820	833	844	852	859	865	938	
Pennsylvania.....	12.00	..	400	500	533	550	560	567	500	511	520	527	533	538	600	
Rhode Island.....	16.00	800	800	800	800	1,000	960	933	800	800	800	800	800	800	800	..
Wisconsin.....	18.20	910	910	910	1,213	1,138	1,092	1,062	910	910	910	910	910	910	910	..

influence in determining relative liberality at the point at which it becomes effective, this point is indicated for each state by a vertical bar, with the exception of Pennsylvania, Ohio and Indiana in which no benefits are paid for the waiting period at any time. In Illinois, benefits vary according to the number of children under 16 years of age.

Until the \$40 wage level is exceeded, all cases of benefits above those of New York are due to the earlier operation of the retroactive factor. At wages in excess of \$40 a week the Connecticut provision of 50% of the wage up to a maximum of \$21 exceeds the New York compensation of 66 $\frac{2}{3}$ % of the wage with the maximum at \$20. If New York experience is typical, around 80% of injured workers are earning less than \$40 a week, and consequently the more liberal maximum of Connecticut will affect comparatively few.

Average Cost per Case in New York and Competing States

The average cost per case, as shown by the actual experience in the policy year 1923, modified to give effect to statutory amendments since that period, is given in Table 64 and Chart 17, for nine states. Two leading competitive states, Pennsylvania and Ohio, are omitted for the reason that, having independent rate-making bodies, they do not come under the jurisdiction of the National Council, which prepared this table. Although the experience represented was of the policy year 1923, the adjustments made have placed the comparison upon a current basis. The average costs per case shown in the first part of the table are based upon the experience reported in Schedule "Z" for the policy year 1923. The losses, reported in Schedule "Z" for states where the compensation law has been amended during or since the close of the policy year 1923, were modified by application of theoretical law amendments in order to place such losses upon the level of benefits provided by the present laws in the respective states. The ratios shown in the second part of the table were obtained by dividing the average cost shown for each state in the first part of the table by the average for New York. It is important to note that these ratios measure the difference in average cost per case and not the difference in the entire cost of compensation between New York

298 WORKMEN'S COMPENSATION IN NEW YORK

and the other states, because they do not take into account differences in accident frequency between the states. Since the present law, however, in each of the states listed provides a waiting period of one week, the temporary total average costs of the various states are comparable as regards waiting period.

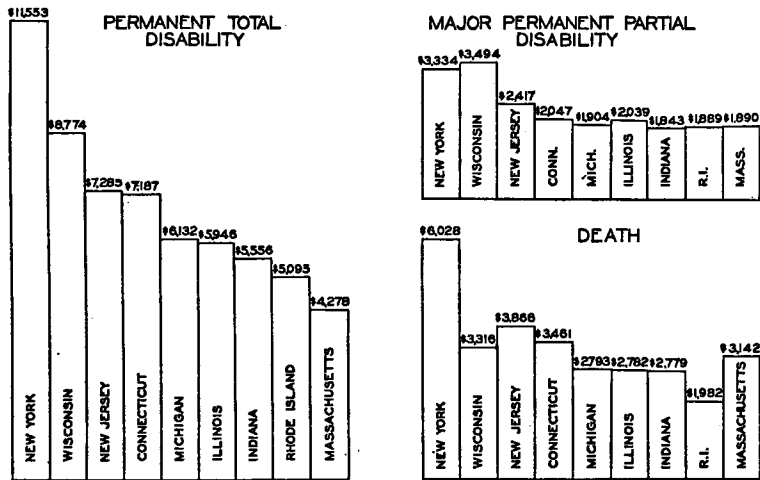
TABLE 64: COMPARISON OF AVERAGE COST PER CASE BY KIND OF INJURY, CERTAIN STATES WITH NEW YORK, POLICY YEAR 1923

(Source: National Council on Compensation Insurance)

State	Kind of Injury					Medical Cost
	Death	Permanent Total	Major Permanent Partial	Minor Permanent Partial	Temporary Total	
A. Average Cost Per Case						
New York.....	\$6,028	\$11,553	\$3,334	\$678	\$109	\$83
Connecticut.....	3,461	7,187	2,047	429	71	95
Illinois.....	2,782	5,946	2,039	506	56	87
Indiana.....	2,779	5,556	1,843	417	40	52
Massachusetts.....	3,142	4,278	1,890	346	90	65
Michigan.....	2,793	6,132	1,904	443	60	78
New Jersey.....	3,866	7,285	2,417	433	60	73
Rhode Island.....	1,982	5,095	1,889	317	60	82
Wisconsin.....	3,316	8,774	3,494	559	62	76
B. Ratio of Each State's Cost to New York						
New York.....	1.000	1.000	1.000	1.000	1.000	1.000
Connecticut.....	.574	.622	.614	.633	.651	1.145
Illinois.....	.462	.515	.612	.746	.514	1.048
Indiana.....	.461	.481	.553	.615	.367	.627
Massachusetts.....	.521	.370	.567	.510	.826	.783
Michigan.....	.463	.531	.571	.653	.550	.940
New Jersey.....	.641	.631	.725	.639	.550	.880
Rhode Island.....	.329	.441	.567	.468	.550	.988
Wisconsin.....	.550	.759	1.048	.824	.569	.951

The table shows that in direct benefits New York's compensation law is more liberal in its provisions for all types of disability except in major permanent partials, where Wisconsin experience shows a slightly higher average cost. Two states, Connecticut and Illinois, exceed New York's medical cost. Permanent totals are shown to be consistently the most costly type of injury because of the indefinite duration of payments. Death cases come next, and they are followed by major permanent partials. The cost of individual temporary total cases appears very small, but because

CHART 17: COMPARISON OF COMPENSATION COST PER CASE BY KIND OF INJURY, NEW YORK AND COMPETING STATES, POLICY YEAR 1923



300 WORKMEN'S COMPENSATION IN NEW YORK

of the great number of these cases their aggregate cost is a substantial part of the total annual cost of compensation.

It is of interest to note how the positions of different states vary in the costliness of certain types of disability. For example, New Jersey's average cost in temporary cases was \$60, as against \$90 in Massachusetts. But the cost of permanent total in Massachusetts was only \$4,278, as against \$7,285 in New Jersey. The index numbers bring out the fact that in a number of instances the average cost per case in certain states was less than half the cost in New York. Of course, these figures measure only the average costs, and total costs might show a quite different alignment.

To provide practically a nation-wide comparison of compensation costs, Table 65, prepared by the National Council on Compensation Insurance, is submitted. Thirty-one states are included, the only exclusions being Pennsylvania and Delaware, which have independent rate-making bodies, and the states requiring exclusive state fund insurance. Injuries are classified as serious or non-serious; medical expense is shown separately, and a final column indicates the combined effect of all factors. The table is divided in two parts. The theoretical differentials were obtained by dividing the theoretical cost of compensating 100,000 accidents under the present New York law by the corresponding theoretical cost in each state under the provisions of the law in effect on January 1, 1926. The same accident distribution, that is the American Accident Table, was used for all states. The experience differentials were obtained by comparing the actual compensation cost in New York, as reported by insurance carriers on Schedule "Z" for the experience period used in determining present New York rates, with the actual compensation cost of each state as reported in Schedule "Z" for the experience period used in determining the state's present rates. In computing the experience differentials for states where statutory amendments have occurred during or since the close of the experience period, losses for each state have been modified to the level of the law in effect in that state on January 1, 1926, in order to make them comparable with the theoretical differentials. While the theoretical differentials measure only statutory differences in the cost of compensa-

COST OF COMPENSATION

301

TABLE 65: COMPARISON OF THEORETICAL AND EXPERIENCE COST DIFFERENTIALS BETWEEN NEW YORK AND OTHER STATES

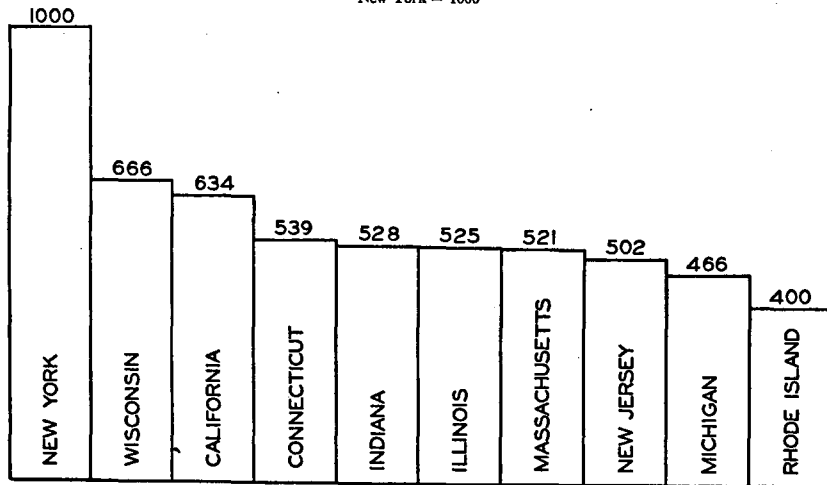
(Source: National Council on Compensation Insurance)
New York=1000

State	Differentials							
	Theoretical				Experience			
	Type of Disability		Medical Cost	All Factors	Type of Disability		Medical Cost	All Factors
	Serious	Non-Serious			Serious	Non-Serious		
New York.....	1000	1000	1000	1000	1000	1000	1000	
Alabama.....	387	624	821	553	315	370	388	
California.....	588	877	1000	767	498	546	1074	
Colorado.....	521	495	877	587	510	357	714	
Connecticut.....	526	796	1000	711	415	410	907	
Georgia.....	418	706	772	585	395	366	801	
Idaho.....	560	686	1000	692	541	594	1157	
Illinois.....	543	886	935	735	441	481	736	
Indiana.....	492	711	877	643	478	418	815	
Iowa.....	494	634	784	599	400	356	741	
Kansas.....	444	704	833	609	360	569	674	
Kentucky.....	454	743	877	635	451	507	812	
Louisiana.....	493	833	944	696	398	559	770	
Maine.....	598	1050	784	782	524	502	828	
Maryland.....	606	983	969	803	556	519	876	
Massachusetts.....	526	757	772	652	448	508	646	
Michigan.....	481	747	957	665	448	367	667	
Minnesota.....	803	1008	864	882	692	726	1026	
Montana.....	523	550	963	623	406	347	1089	
Nebraska.....	683	840	1000	800	644	580	1203	
New Jersey.....	631	910	762	748	435	515	593	
New Mexico.....	386	502	667	482	330	279	475	
Oklahoma.....	541	927	938	748	447	617	1104	
Rhode Island.....	472	649	877	613	238	318	754	
South Dakota.....	431	950	883	692	340	558	807	
Tennessee.....	443	627	772	570	469	332	727	
Texas.....	587	839	883	730	664	650	1104	
Utah.....	624	823	969	760	591	616	1236	
Vermont.....	374	633	679	521	322	398	627	
Virginia.....	425	619	926	591	387	355	900	
Wisconsin.....	888	945	969	918	575	596	918	

tion between New York and the other states, the experience differentials measure not only statutory differences but differences in all other elements which affect the cost of compensation, including differences in accident frequency and sever-

CHART 18: INDEX NUMBERS OF RELATIVE COST OF COMPENSATION IN NEW YORK AND OTHER STATES . .

New York = 1000



ity and differences in liberality of compensation law administrative authorities.

In direct benefits two states, Maine and Minnesota, are more liberal in non-serious injuries than New York on the basis of theoretical benefits, but in actual experience no other state even approaches New York. Several states show higher medical benefits, both theoretical and actual, but with all benefits combined New York again is not even approached in liberality. With all cost factors combined, it is significant that on the basis of actual experience prominent industrial states compare with New York as follows: New York 1,000; California 634; Connecticut 539; Illinois 525; Indiana 528; Massachusetts 521; Michigan 466; New Jersey 502; Rhode Island 400; and Wisconsin 666, as may be seen on Chart 18.

Pennsylvania and Ohio Costs Compared with New York

In a number of the preceding tables showing comparative compensation costs, Pennsylvania and Ohio have not been represented because these states have independent rate-making bodies and consequently do not come under the jurisdiction of the National Council on Compensation Insurance which compiled the cost figures. In order to make a comparison of compensation costs in Pennsylvania and Ohio with the cost of compensation in New York, the National Council on Compensation Insurance has prepared Tables 66 and 67. A considerable number of occupational classifications common to New York and to the other two states has been selected for this purpose. Manual premiums for Pennsylvania were obtained by multiplying the New York payrolls for policy year 1923, as reported in Schedule "Z," by the present manual rates in Pennsylvania, while manual premiums for New York are the result of multiplying the New York payrolls for 1923 by the present manual rates in New York. Substantially the same procedure was followed in the case of Ohio except that account had to be taken of the Ohio provision that $1\frac{1}{2}$ cents per \$100 payroll must be contributed to the occupational disease fund, and in extending the New York payroll at the Ohio manual rates for occupational diseases, this charge has been added in each case.

Table 66 shows the present manual rates and manual pre-

TABLE 66: PRESENT MANUAL RATES AND MANUAL PREMIUMS IN NEW YORK AND PENNSYLVANIA, POLICY YEAR 1923

(Source: National Council on Compensation Insurance)

Code		Classification	New York Policy Year 1923 Payroll	Present Manual Rates		Manual Premiums	
Pennsylvania	New York			Pennsylvania	New York	Pennsylvania	New York
Contracting Classifications							
653	5022	Masonry (N.O.C.) ^a	\$17,242,400	\$1.25	\$7.33	\$215,530	\$1,263,868
655	5040	Iron and Steel Erection—frame structures	1,451,100	5.50	27.45	79,811	398,327
655	5057	Iron and Steel Erection (N.O.C.)	1,089,600	5.50	13.86	59,928	151,019
663	5183	Plumbing (N.O.C.)	35,844,000	.80	2.34	286,752	838,750
661	5190	Electrical Fixtures—installation	15,481,300	.65	1.88	100,628	291,048
654	5101	Concrete Construction—Floors	787,500	2.45	8.45	19,294	66,544
654	5203	Concrete Construction—Bridges	444,200	2.45	12.03	10,883	53,437
654	5204	Concrete Construction—Buildings	9,473,200	2.45	8.45	232,093	800,485
654	5209	Concrete Construction—Foundations	3,881,500	2.45	7.71	95,097	299,264
654	5210	Concrete Construction—Piers	1,373,300	2.45	6.19	33,646	85,007
654	5211	Concrete Construction—Highway Bridges	732,000	2.45	5.36	17,934	39,235
651	5401	Carpentry (N.O.C.)	3,089,400	1.15	18.71	35,528	578,027
651	5437	Carpentry—Interior trim.	14,727,600	1.15	2.46	169,369	362,299
669	5480	Plastering (N.O.C.)	11,370,500	.70	4.71	79,594	535,551
665	5461	Painting and Decorating—not interior	2,910,500	1.40	13.05	40,748	379,833
665	5490	Painting and Decorating—interior	15,204,700	1.40	2.98	212,866	453,100
601	6042	Street or Road Construction	17,051,600	1.80	5.56	306,929	948,069
Manufacturing Classifications							
401	1421	Blast Furnaces	1,223,300	1.80	8.68	22,019	106,182
501	1701	Cement Manufacturing	2,453,300	1.20	5.74	29,440	140,819
505	1803	Stone Cutting and Polishing	7,940,100	.95	2.59	75,431	205,649
105	2000	Bakeries	22,291,200	.70	1.98	156,038	441,366
105	2001	Cracker Manufacturing	1,911,000	.70	1.98	13,377	37,838
105	2002	Macaroni Manufacturing	876,900	.70	7.51	6,138	65,855
101	2014	Milling of Grain	3,061,300	1.20	3.11	36,736	95,206

^a"N.O.C." is an abbreviation of "not otherwise classified."

103	2021	Sugar Refining	5,306,200	1.05	2.61	55,715	138,492
110	2040	Ice Cream Manufacturing	3,053,500	1.20	3.29	36,642	100,460
107	2041	Confectionery Manufacturing	11,456,700	.70	1.84	80,197	210,803
107	2042	Chocolate Manufacturing	1,488,800	.70	1.84	10,422	27,394
111	2089	Packing Houses	3,570,700	1.15	3.03	41,063	108,192
114	2150	Ice Manufacturing	3,082,300	1.00	4.44	30,823	136,854
132	2222	Cotton Spinning and Weaving	4,912,200	.37	1.44	18,175	70,736
132	2286	Wool Spinning and Weaving	8,458,500	.37	1.01	31,296	85,431
133	2303	Silk Throwing and Weaving	9,669,200	.18	.49	17,405	47,379
135	2361	Hosiery Manufacturing	2,471,300	.15	.44	3,707	10,874
135	2362	Knit Goods Manufacturing	29,610,400	.15	.69	44,416	204,312
136	2386	Lace Manufacturing	1,716,700	.37	.48	6,352	8,240
136	2388	Embroidery Manufacturing	4,370,800	.37	.48	16,172	20,980
161	2501	Clothing Manufacturing	233,672,400	.18	.31	420,610	724,384
161	2532	Millinery Manufacturing	22,224,900	.18	.31	40,005	68,897
141	2581	Laundries (N.O.C.)	16,870,200	.50	2.26	84,351	381,267
141	2583	Cleaning and Dyeing	2,528,000	.50	1.81	12,640	45,757
201	2623	Tanning	5,416,500	.70	2.51	37,916	135,954
204	2660	Boot and Shoe Manufacturing	34,970,000	.25	.88	87,425	307,737
305	2731	Planing and Moulding Mills	5,981,200	1.60	4.44	95,699	265,565
323	2763	Trunk Manufacturing	516,500	.80	2.28	4,132	11,776
323	2804	Coffin Manufacturing	1,264,600	.80	3.74	10,117	47,296
323	2883	Furniture Manufacturing	20,455,800	.80	2.56	163,646	523,668
323	2923	Piano Manufacturing	5,844,300	.80	1.63	46,754	95,262
404	3002	Steel Making Open Hearth or Bessemer	8,810,300	1.55	4.69	136,560	413,203
425	3081	Foundries—Iron	13,332,600	1.15	3.14	153,325	418,644
445	3146	Hardware Manufacturing	7,234,600	.70	2.59	50,642	187,376
445	3180	Electric or Gas Fixtures Manufacturing	5,895,100	.70	1.84	41,266	108,470
458	3383	Jewelry Manufacturing	10,088,100	.18	.51	18,159	51,449
461	3632	Machine Shops—excluding foundry	24,338,100	.95	2.93	231,212	713,106
473	3643	Electric Apparatus Manufacturing	8,555,500	.70	2.01	59,889	171,966
463	3808	Automobile Manufacturing	14,696,100	.75	1.89	110,221	277,756
451	3811	Automobile Body Manufacturing	2,289,100	.85	2.74	19,457	62,721

TABLE 66: PRESENT MANUAL RATES AND MANUAL PREMIUMS IN NEW YORK AND PENNSYLVANIA, POLICY YEAR 1923—(Continued)

(Source: National Council on Compensation Insurance)

Code		Classification	New York Policy Year 1923 Payroll	Present Manual Rates		Manual Premiums	
Penn- syl- vania	New York			Pennsylvania	New York	Pennsylvania	New York
Manufacturing Classifications							
512	4029	Brick Manufacturing (N.O.C.)	\$7,061,600	\$1.20	\$3.84	\$84,739	\$271,165
512	4041	Earthenware or Tile Manufacturing	386,700	1.20	2.73	4,640	10,557
257	4240	Box Manufacturing—solid paper	9,585,000	.90	1.91	86,265	183,074
257	4241	Box Manufacturing—folding paper	2,366,200	.90	3.49	21,296	82,580
281	4299	Printing and Lithographing	64,094,500	.28	.98	179,465	628,126
281	4304	Newspaper Publishing	25,861,500	.28	.98	72,412	253,443
281	4307	Bookbinding	17,073,800	.28	.79	47,807	134,883
225	4410	Rubber Goods Manufacturing (N.O.C.)	2,322,000	.65	2.94	15,093	68,267
225	4420	Rubber Tire Manufacturing	2,018,900	.65	2.59	13,123	52,290
Miscellaneous Classifications							
001	0004	Florists	2,451,500	.40	1.06	9,806	25,986
0006	0006	Farm Labor	9,484,700	1.00	2.49	94,847	236,169
301	2702	Logging and Lumbering	2,091,700	6.00	17.23	125,502	360,400
301	2710	Saw Mills	1,736,500	6.00	12.33	104,190	214,110
805	7205	Drivers and Their Helpers	22,569,400	1.50	3.59	338,541	810,241
811	7219	Truckmen (N.O.C.)	11,040,700	2.35	8.21	259,456	906,441
807	7380	Chauffeurs and Their Helpers	53,249,700	1.05	2.48	559,122	1,320,593
914	8000	Department Stores	31,568,600	.23	.63	72,608	198,882
465	8380	Automobile Dealers	50,484,500	.70	2.13	353,392	1,075,320
951	8742	Salesmen, Collectors and Messengers	221,633,300	.13	.16	288,123	354,613
953	8810	Clerical Office Employees	621,092,300	.05	.06	310,546	372,655
961	9040	Asylums or Hospitals	11,317,000	.45	1.41	50,927	159,570
973	9050	Hotels	36,148,100	.55	1.41	198,815	509,688
975	9059	Clubs	12,791,400	.50	.88	63,957	112,564
975	9071	Restaurants	56,461,300	.50	1.04	282,307	587,198
967	9150	Theatres—Stage Hands	9,348,900	.20	.94	18,698	87,880
967	9154	Theatres—Managers	12,433,000	.20	.31	24,866	38,542
Total			\$2,022,735,700	..	..	\$8,232,761	\$23,874,416

miums in New York and Pennsylvania, and a random comparison of the manual rates for the two states is sufficient to indicate the disparity in compensation costs. To take a few examples, the rate for blast furnaces is \$1.80 in Pennsylvania, as against \$8.68 in New York; cotton spinning, 37 cents in Pennsylvania and \$1.44 in New York; and plastering 70 cents in Pennsylvania and \$4.71 in New York. When the payrolls for the occupations listed, which accounted for about 60% of the total in New York, are extended at the New York rates and at the Pennsylvania rates, a total premium cost of \$23,874,416 is found for New York, as against \$8,232,761 for Pennsylvania. In other words, the cost for New York for these classifications is 190% greater than for Pennsylvania. This indicates both the greater cost to New York employers and, because of this, the greater benefits to their employees.

The product of the Ohio rates and the New York payrolls plus the occupational disease charge indicates what would have been collected from Ohio employers on the basis of the New York payrolls. This is shown in the fifth column of Table 67. The last column shows the actual New York losses taken from Schedule "Z." By totalling the two columns it is found that, for the occupational classifications covered, the Ohio rates would have produced premiums amounting to \$9,486,656. Since the Ohio rates are practically pure premiums (1% is added to safety service), this sum represents the amount which would be received by injured employees as compensation and medical benefits. The actual New York losses brought to the level of the present New York law were \$13,693,012. This means that employees in New York received benefits 44% in excess of what they would have received in Ohio. Consequently, Pennsylvania and Ohio are no exceptions to the rule that compensation costs and benefits are higher in New York than in any other industrial state.

The Trend of Costs by States

As a final summary of cost experience over a number of years, Tables 68 to 72 have been prepared by the National Council on Compensation Insurance to show the trend of

TABLE 67: COMPARISON OF COMPENSATION COSTS IN NEW YORK AND OHIO, POLICY YEAR 1923
(Source: National Council on Compensation Insurance)

Code		Classification	New York Policy Year 1923 Payroll	1926 Ohio Manual Rates (For Industrial Acci- dents)	Ohio Manual Premiums			New York Policy Year 1923 Losses on Level of Present New York Law
Ohio	New York				For Indus- trial Accidents	For Occu- pational Diseases	Total	
5022	5022	Masonry (N.O.C.) ¹	\$17,242,400	\$2.40	\$413,818	\$2,586	\$416,404	\$582,398
5040	5040	Iron and Steel Erection	1,451,100	7.80	113,186	218	113,404	237,030
5190	5190	Electrical Fixtures—Installation	15,481,300	.55	85,147	2,322	87,469	196,095
5204	5204	Concrete Construction—Buildings	9,473,200	3.50	331,562	1,421	332,983	374,694
5402	5401	Carpentry (N.O.C.)	3,089,400	1.25	38,618	463	39,081	425,351
	5643	Carpentry—Private Residences	37,369,000	1.25	467,113	5,605	472,718	914,658
	5437	Carpentry—Interior Trim.	14,727,600	.75	110,457	2,209	112,666	210,006
5437	5480	Plastering (N.O.C.)	11,370,500	.75	85,279	1,706	86,985	297,020
	5183	Plumbing (N.O.C.)	35,844,000	.75	268,830	5,377	274,207	464,551
5490	5490	Painting and Decorating—Interior	15,204,700	.70	106,433	2,281	108,714	242,000
5502	5502	Concrete Work—Sidewalks and Floors	7,500,100	1.30	97,501	1,125	98,626	97,088
6040	6041	Grading Land	6,223,900	1.25	77,799	934	78,733	139,153
6042	6042	Street or Road Construction	17,051,600	3.30	562,703	2,558	565,261	549,019
1421	1421	Blast Furnaces	1,223,300	1.60	19,573	183	19,756	40,875
1651	1654	Cement Quarries	611,800	2.25	13,766	92	13,858	54,117
	1701	Cement Manufacturing	2,453,300	2.25	55,199	368	55,567	41,629
2000	2000	Bakeries	22,291,200	.70	156,038	3,344	159,382	302,598
2014	2014	Milling of Grain	3,061,300	1.20	36,736	459	37,195	71,014
2021	2021	Sugar Refining	5,306,200	.60	31,837	796	32,633	70,847
2040	2040	Ice Cream Manufacturing	3,053,500	.60	18,321	458	18,779	66,668
2041	2041	Confectionery Manufacturing	11,456,700	.90	103,110	1,719	104,829	110,479
2042	2042	Chocolate Manufacturing	1,488,800	1.10	16,377	223	16,600	24,094
2062	2065	Milk Products—Manufacturing	3,403,200	1.00	34,032	510	34,542	53,038
2081	2081	Butchering	2,576,800	1.30	33,498	387	33,885	69,766
2150	2150	Ice Manufacturing	3,082,300	1.30	40,070	462	40,532	65,203

¹ "N.O.C." is an abbreviation of "not otherwise classified."

	2220	Yarn or Thread Manufacturing—Cotton	4,464,400	.55	24,554	670	25,224	58,637
	2220	Yarn Manufacturing—Wool	2,905,700	.55	15,981	436	16,417	30,127
	2302	Silk Thread or Yarn Manufacturing	2,736,600	.55	15,051	410	15,461	12,239
	2222	Cotton Spinning and Weaving	4,912,200	.70	34,385	737	35,122	63,789
	2286	Wool Spinning and Weaving	8,458,500	.90	76,127	1,269	77,396	43,268
	2303	Silk Throwing and Weaving	9,669,200	.40	38,677	1,450	40,127	16,179
	2362	Knit Goods Manufacturing	29,610,400	.55	162,857	4,442	167,299	119,901
	2388	Embroidery Manufacturing	4,370,800	.15	6,556	656	7,212	9,809
	2501	Clothing Manufacturing	212,757,700	.10	212,758	31,914	244,672	394,003
	2502	Fur Goods Manufacturing	20,283,400	.10	20,283	3,043	23,326	39,571
	4409	Rubber Garments Manufacturing—incl. Rubber Mill		.45				
	4416	Rubber Garments Manufacturing—no Rubber Mill	631,300	.45	2,841	95	2,936	2,160
	2521	Shirt Manufacturing	13,396,300	.20	26,793	2,009	28,802	32,067
	2532	Millinery Manufacturing	22,224,900	.15	33,337	3,334	36,671	34,317
	2581	Laundries (N.O.C.)	16,870,200	1.00	168,702	2,531	171,233	225,938
	2623	Tanning	5,416,500	2.20	119,163	812	119,975	92,564
	2660	Boot and Shoe Manufacturing	34,970,100	.25	87,425	5,246	92,671	157,249
	2730	Sash, Door and Assembled Mill Work Manufacturing	4,377,300	1.30	56,905	657	57,562	99,074
	2731	Planing and Moulding Mills	5,981,200	2.15	128,596	897	129,493	125,976
	2883	Furniture Manufacturing	20,455,800	.80	163,646	3,068	166,714	284,376
	2923	Piano Manufacturing	5,844,300	.80	46,754	877	47,631	66,791
	3000	Steel Works—Open Hearth or Bessemer	8,810,300	1.00	88,103	1,322	89,425	184,958
	3004	Steel Works—Electric	2,552,700	1.00	25,527	383	25,910	73,512
	3081	Foundries—Iron	13,332,600	1.35	179,990	2,000	181,990	227,709
	3146	Hardware Manufacturing	7,234,600	.90	65,111	1,085	66,196	119,562
	3180	Electric or Gas Fixtures Manufacturing	5,895,100	.60	35,371	884	36,255	50,931
	3383	Jewelry Manufacturing	10,088,100	.10	10,088	1,513	11,601	24,791
	3385	Watch Manufacturing	744,300	.10	744	112	856	3,036
	3400	Metal Goods Manufacturing (N.O.C.)	4,144,000	1.00	41,440	622	42,062	162,116
	3632	Machine Shops—exclusive foundry	24,338,100	.95	231,212	3,651	234,863	420,262
	3634	Valve Manufacturing	6,834,600	.70	47,842	1,025	48,867	54,745
	3643	Electric Apparatus Manufacturing	8,555,500	.75	64,166	1,283	65,449	100,780
	3808	Automobile Manufacturing	14,696,100	.80	117,569	2,204	119,773	158,811
	3816	Automobile Body Manufacturing	2,289,100	.60	13,735	343	14,078	44,343
	4024	Brick Manufacturing—Fire Brick	434,100	1.60	6,946	65	7,011	12,662
	4029	Brick Manufacturing (N.O.C.)	7,061,600	1.60	112,986	1,059	114,045	148,227
	4041	Earthenware or Tile Manufacturing	386,700	1.60	6,187	58	6,245	8,483
	4240	Box Manufacturing—Solid Paper	9,585,000	.60	57,510	1,438	58,948	96,090

TABLE 67: COMPARISON OF COMPENSATION COSTS IN NEW YORK AND OHIO, POLICY YEAR 1923—(Continued)

(Source: National Council on Compensation Insurance)

Code		Classification	New York Policy Year 1923 Payroll	1926 Ohio Manual Rates For Industrial Accidents)	Ohio Manual Premiums			New York Policy Year 1923 Losses on Level of Present New York Law
Ohio	New York				For Industrial Accidents	For Occupational Diseases	Total	
310	4300	4300 Printing	34,371,200	.20	68,742	5,156	73,898	155,625
		4305 Publishing (not Newspaper Publishing)	34,400	.20	69	5	74	319
	4350	4302 Lithographing	2,860,800	.30	8,582	429	9,011	22,604
	4306	4306 Playing Cards Manufacturing	350,300	.45	1,576	53	1,629	663
	4304	4304 Newspaper Publishing	25,861,500	.22	56,895	3,879	60,774	153,379
	4350	4307 Bookbinding	17,073,800	.30	51,221	2,561	53,782	71,437
		4410 Rubber Goods Manufacturing (N.O.C.)	2,543,600	.30	7,631	382	8,013	5,669
	4703	4703 Corn Products Manufacturing	2,322,000	.75	17,415	348	17,763	61,213
	0004	0004 Florists	649,000	1.20	7,788	97	7,885	51
	0006	0006 Farm Labor	2,451,500	.55	13,483	368	13,851	9,792
	2702	2702 Logging and Lumbering	9,484,700	2.00	189,694	1,423	191,117	151,185
	7380	7205 Drivers and Their Helpers	2,091,700	6.00	125,502	314	125,816	248,184
	7380	7380 Chauffeurs and Their Helpers	22,569,400	1.40	315,972	3,385	319,357	457,918
	8000	8000 Department Stores	53,249,700	1.40	745,496	7,987	753,483	813,891
	8380	8380 Automobile Dealers	31,568,000	.20	63,137	4,735	67,872	96,459
	8747	8742 Salesmen, Collectors and Messengers	50,484,500	.80	403,876	7,573	411,449	649,328
	8810	8810 Clerical Office Employees	221,633,300	.13	288,123	33,245	321,368	160,742
	9040	9040 Asylums or Hospitals	621,092,300	.03	186,328	93,164	279,492	266,840
	9050	9050 Hotels	11,317,000	.65	73,561	1,698	75,259	113,652
	9071	9071 Restaurants	36,148,100	.45	162,666	5,422	168,088	296,246
		9150 Theatres—Stage Hands	56,461,300	.80	451,690	8,469	460,159	356,234
	9154	9154 Theatres—Managers	9,348,900	.20	18,698	1,402	20,100	53,957
		9156 Theatres—Players	12,433,000	.20	24,866	1,865	26,731	19,092
		16,445,500	.20	32,891	2,467	35,358	30,088	
Total.....			\$2,052,202,000		\$9,178,871	\$3,207,833	\$9,486,704	\$12,601,017

compensation cost for a large number of states. The states omitted include those having independent rate-making organizations, such as Pennsylvania and Delaware, and the exclusive insurance fund states. Detailed data are not available for these states. Arizona and New Hampshire have not been included on account of the law provisions which permit an employee to elect after the accident whether he will seek indemnity under the liability law or accept compensation. Table 68 deals with total costs and the others with costs for the component parts.

The "loss ratios" in Table 68 represent the actual loss ratios which would have been experienced in the several states had the present premium rates been in effect during each of the years from 1919 to 1924. The loss ratios were obtained by dividing the total actual incurred losses as reported in Schedule "Z" by the premiums at present manual rates; and actually, as shown here, these ratios indicate the number of cents of incurred losses per dollar of premium had the present rates been in effect during each year. These loss ratios are merely an intermediate step in calculating the index numbers and should not be confused with the loss ratios as reported by insurance carriers. As the cost of compensation increases, the loss ratio must increase if rates remain unchanged; and as a common set of manual rates is used in this case for each year, the loss ratios as given represent the trend in cost. By dividing the "loss ratio" for each year for each state by the 1919 "loss ratio" the index numbers shown in the table have been obtained. These show the increase in costs due to all causes, as well as the trend of costs for the five year period.

It will be noted that, for New York, costs are given as having increased 44% in the five years, and that there are ten states which show greater increases; New Mexico 158%, Maryland 93%, Virginia 89%, Minnesota 86% and New Jersey 75%. The laws in New Mexico and Virginia became effective in 1917 and 1919 respectively, and increased costs were no higher than was to be expected during the first few years of their experience with workmen's compensation insurance. By referring to Table 65 it will be seen that in spite of the greater increases in cost in these states during

TABLE 68: COMPARISON OF RATIOS OF TOTAL ACTUAL INCURRED LOSSES TO PREMIUMS AT PRESENT MANUAL RATES, NEW YORK AND OTHER STATES, FOR THE POLICY YEARS 1919-1924

(Source: National Council on Compensation Insurance)

State	Loss Ratios: Total Actual Losses to Manual Premiums						Index Numbers of Each State's Loss Ratios with 1919 as Base					
	1919	1920	1921	1922	1923	1924	1919	1920	1921	1922	1923	1924
New York	41.4	39.6	46.6	50.5	53.1	59.7	1.000	.957	1.126	1.220	1.283	1.442
Alabama	..	42.8	58.9	54.1	60.3	60.3	..	1.000 ^t	1.376	1.264	1.409	1.409
California	56.7	55.7	60.4	57.6	58.3	61.8	1.000	.982	1.065	1.016	1.028	1.090
Colorado	40.3	38.9	49.6	53.8	56.1	62.0	1.000	.965	1.231	1.335	1.392	1.538
Connecticut	44.1	48.5	56.7	57.2	61.1	58.4	1.000	1.100	1.286	1.297	1.385	1.324
Georgia	..	..	42.5	47.1	58.5	59.4	..	..	1.000 ^a	1.108	1.376	1.398
Idaho	39.9	48.7	58.6	59.9	61.5	60.5	1.000	1.221	1.469	1.501	1.541	1.516
Illinois	48.9	46.7	53.2	55.4	57.0	51.2	1.000	.955	1.088	1.133	1.166	1.047
Indiana	50.9	50.8	56.3	59.7	59.9	53.3	1.000	.998	1.106	1.173	1.177	1.047
Iowa	46.5	44.6	53.5	59.2	59.4	53.8	1.000	.959	1.151	1.273	1.277	1.157
Kansas	46.3	49.8	56.8	59.8	61.3	61.9	1.000	1.076	1.227	1.292	1.324	1.337
Kentucky	45.3	47.9	48.1	62.9	53.7	53.7	1.000	1.057	1.062	1.389	1.185	1.185
Louisiana	40.8	39.4	49.2	54.9	59.8	63.6	1.000	.966	1.206	1.346	1.466	1.559
Maine	40.6	45.9	52.5	63.8	55.2	55.6	1.000	1.131	1.293	1.571	1.360	1.369
Maryland	29.1	40.1	54.9	53.5	53.8	56.2	1.000	1.378	1.887	1.838	1.849	1.931
Massachusetts	47.7	58.8	63.5	64.0	58.9	58.1	1.000	1.233	1.331	1.342	1.235	1.218
Michigan	46.2	49.2	56.1	58.8	53.2	48.6	1.000	1.065	1.214	1.273	1.152	1.052
Minnesota	35.5	39.1	55.4	58.3	61.3	66.0	1.000	1.101	1.561	1.642	1.727	1.859
Montana	36.5	43.6	37.6	51.6	41.1	52.0	1.000	1.195	1.030	1.414	1.126	1.425
Nebraska	49.0	42.7	50.3	66.7	58.5	55.3	1.000	.871	1.027	1.361	1.194	1.129
New Jersey	33.3	33.2	40.2	48.6	56.1	58.2	1.000	.997	1.207	1.459	1.685	1.748
New Mexico	28.6	47.7	43.5	46.7	49.5	73.9	1.000	1.668	1.521	1.633	1.731	2.584
Oklahoma	41.2	43.5	60.3	59.8	61.8	56.1	1.000	1.056	1.464	1.451	1.500	1.362
Rhode Island	46.6	50.4	57.9	63.4	52.4	50.0	1.000	1.082	1.242	1.361	1.124	1.073
South Dakota	40.2	46.6	54.7	64.3	55.3	52.8	1.000	1.159	1.361	1.600	1.376	1.313
Tennessee	41.7	43.9	52.4	49.1	51.5	55.9	1.000	1.053	1.257	1.177	1.235	1.341
Texas	38.6	40.9	48.2	50.5	62.9	61.6	1.000	1.060	1.249	1.308	1.630	1.596
Utah	51.7	65.5	74.9	71.6	84.7	60.4	1.000	1.267	1.449	1.385	1.638	1.168
Vermont	43.4	44.3	53.8	65.2	59.9	53.3	1.000	1.021	1.240	1.502	1.380	1.228
Virginia	31.4	46.5	48.9	59.2	57.2	59.4	1.000	1.481	1.557	1.885	1.822	1.892
Wisconsin	41.2	43.4	55.9	59.3	58.2	59.9	1.000	1.053	1.357	1.439	1.413	1.454

the period given, New York present costs are still far in advance.

Table 69 shows the increase in the cost of the medical item for the same period. The loss ratios were obtained by dividing the actual medical losses reported in Schedule "Z" by premiums at present manual rates. No modifications were made for changes in benefits resulting from law amendments. For states where Schedule "Z" for policy year 1924 was not available at the time of preparation of this table, the 1924 ratios are based on preliminary loss ratio data furnished by the carriers.

Fourteen states are indicated as having had a greater increase in costs than the 56% shown for New York. Most of these states, however, are mining or agricultural states. Six of them actually show higher costs on the basis of the experience differential given in Table 65. The ratios of the cost of the medical item in these states to the cost in New York are given in the table below, New York being taken as 1.009.

Utah.....	1.230
Nebraska.....	1.203
Texas.....	1.104
Oklahoma.....	1.104
Montana.....	1.059
Minnesota.....	1.026

Since the New York workmen's compensation law provides for unlimited medical service, the only explanation of these higher costs lies in the medical fees allowed and in the accident severity. New Jersey is the only manufacturing state included in Table 69, which shows a greater increase in cost, but the actual medical costs in New York are far in excess of those of New Jersey. The actual ratio as given in Table 65 is 1.000 for New York as against .593 for New Jersey.

Table 70 shows the per cent of change which occurred in indemnity costs in the several states during the five year period, not including medical costs. The loss ratios are the result of dividing the actual indemnity incurred losses, as reported in Schedule "Z," by premiums at present manual rates, without any modification for changes in benefits caused by law amendments. The 1924 loss ratios were computed in the same manner as in Table 69. Ten states are shown as

TABLE 69: COMPARISON OF RATIOS OF ACTUAL MEDICAL INCURRED LOSSES TO PREMIUMS AT PRESENT
MANUAL RATES, NEW YORK AND OTHER STATES, FOR THE POLICY YEARS 1919-1924

(Source: National Council on Compensation Insurance)

State	Loss Ratio: Actual Medical Losses to Manual Premiums						Index Numbers for Each State's Loss Ratios with 1919 as Base					
	1919	1920	1921	1922	1923	1924	1919	1920	1921	1922	1923	1924
New York	7.9	8.4	11.0	12.4	12.3	12.3	1.000	1.063	1.392	1.570	1.557	1.557
Alabama	..	12.9	17.3	17.2	19.5	19.5	..	1.000 ¹	1.341	1.333	1.512	1.512
California	18.5	19.6	22.9	22.5	22.5	22.5	1.000	1.059	1.238	1.216	1.216	1.216
Colorado	12.0	13.3	15.9	16.4	17.1	17.1	1.000	1.108	1.325	1.367	1.425	1.425
Connecticut	15.4	16.9	21.8	23.3	22.9	22.9	1.000	1.097	1.416	1.513	1.487	1.487
Georgia	..	..	13.7	16.6	19.3	19.3	..	..	1.000 ²	1.212	1.409	1.409
Idaho	11.5	10.3	16.5	14.8	9.5	9.5	1.000	.896	1.435	1.287	.826	.826
Illinois	14.3	15.0	18.0	18.9	19.4	19.6	1.000	1.049	1.259	1.322	1.357	1.371
Indiana	12.3	12.6	16.0	17.4	18.0	18.0	1.000	1.024	1.301	1.415	1.463	1.463
Iowa	12.6	14.1	18.0	20.6	21.0	21.0	1.000	1.119	1.429	1.635	1.667	1.667
Kansas	10.1	12.6	14.7	15.9	16.3	16.3	1.000	1.248	1.455	1.574	1.614	1.614
Kentucky	11.2	11.8	14.3	17.3	16.4	16.4	1.000	1.054	1.277	1.545	1.464	1.464
Louisiana	12.1	10.4	13.6	16.9	18.4	18.4	1.000	.860	1.124	1.397	1.521	1.521
Maine	9.9	11.4	14.8	18.8	17.3	19.5	1.000	1.152	1.495	1.899	1.747	1.970
Maryland	7.4	10.0	14.5	15.5	16.1	16.7	1.000	1.351	1.959	2.095	2.176	2.257
Massachusetts	13.5	14.2	17.0	18.5	17.2	18.3	1.000	1.052	1.259	1.370	1.274	1.356
Michigan	13.9	14.8	17.2	18.0	17.4	17.4	1.000	1.065	1.237	1.295	1.252	1.252
Minnesota	10.0	12.4	15.0	16.6	17.4	17.4	1.000	1.240	1.500	1.660	1.740	1.740
Montana	7.9	10.9	15.0	19.1	16.3	15.1	1.000	1.380	1.899	2.418	2.443	2.177
Nebraska	11.6	12.2	17.5	21.0	19.7	19.7	1.000	1.052	1.509	1.810	1.698	1.698
New Jersey	8.4	9.4	11.8	14.7	14.7	14.7	1.000	1.119	1.405	1.750	1.750	1.750
New Mexico	5.9	8.4	15.4	14.0	10.6	13.8	1.000	1.424	2.610	2.373	1.797	2.339
Oklahoma	11.1	12.2	19.2	20.0	18.1	18.7	1.000	1.099	1.730	1.802	1.631	1.685
Rhode Island	18.4	19.4	25.1	28.6	24.4	24.4	1.000	1.054	1.364	1.554	1.326	1.326
South Dakota	11.0	12.1	16.2	19.9	18.9	18.9	1.000	1.100	1.473	1.809	1.718	1.718
Tennessee	11.7	13.1	16.9	17.7	17.9	17.9	1.000	1.120	1.444	1.513	1.530	1.530
Texas	10.3	11.1	14.5	15.8	17.6	17.8	1.000	1.078	1.408	1.534	1.709	1.728
Utah	12.5	16.4	21.6	22.7	23.6	23.6	1.000	1.312	1.728	1.816	1.888	1.888
Vermont	11.3	12.2	15.4	18.7	17.2	17.1	1.000	1.080	1.363	1.655	1.522	1.513
Virginia	8.2	13.1	16.8	21.7	19.7	21.6	1.000	1.598	2.049	2.561	2.402	2.634
Wisconsin	12.8	14.0	17.8	19.6	19.1	19.1	1.000	1.094	1.391	1.531	1.492	1.492

TABLE 70: COMPARISON OF RATIOS OF ACTUAL INDEMNITY INCURRED LOSSES TO PREMIUMS AT PRESENT
 MANUAL RATES, NEW YORK AND OTHER STATES, FOR THE POLICY YEARS 1919-1924
 (Source: National Council on Compensation Insurance)

State	Loss Ratios of Actual Indemnity Losses to Manual Premiums						Index Numbers of Each State's Loss Ratios with 1919 as Base					
	1919	1920	1921	1922	1923	1924	1919	1920	1921	1922	1923	1924
New York.....	33.5	31.2	35.6	38.1	40.8	47.4	1.000	.931	1.063	1.137	1.218	1.415
Alabama.....	29.9	29.9	41.6	36.9	40.8	40.8	...	1.000 ¹	1.391	1.234	1.365	1.365
California.....	38.2	36.1	37.5	35.1	35.8	39.3	1.000	.945	.982	.919	.937	1.029
Colorado.....	28.3	25.6	33.7	37.4	39.0	44.9	1.000	.905	1.191	1.322	1.378	1.587
Connecticut.....	28.7	31.6	34.9	33.9	38.2	35.5	1.000	1.101	1.216	1.181	1.331	1.237
Georgia.....	...	...	28.8	30.5	39.2	40.1	...	...	1.000 ¹	1.059	1.361	1.392
Idaho.....	28.4	38.4	42.1	45.1	52.0	51.0	1.000	1.352	1.482	1.588	1.831	1.796
Illinois.....	34.6	31.7	35.2	36.5	37.6	31.6	1.000	.916	1.017	1.055	1.087	.913
Indiana.....	38.6	38.2	40.3	42.3	41.9	35.3	1.000	.990	1.044	1.096	1.085	.915
Iowa.....	33.9	30.5	35.5	38.6	38.4	32.8	1.000	.900	1.047	1.139	1.133	.968
Kansas.....	36.2	37.2	42.1	43.9	45.0	45.6	1.000	1.028	1.163	1.213	1.243	1.260
Kentucky.....	34.1	36.1	33.8	45.6	37.3	37.3	1.000	1.059	.991	1.337	1.094	1.094
Louisiana.....	28.7	29.0	35.6	38.0	41.4	45.2	1.000	1.010	1.240	1.324	1.443	1.575
Maine.....	30.7	34.5	37.7	45.0	37.9	36.1	1.000	1.124	1.228	1.466	1.235	1.176
Maryland.....	21.7	30.1	40.4	38.0	37.7	39.6	1.000	1.387	1.862	1.751	1.737	1.825
Massachusetts.....	34.2	44.6	46.5	45.5	41.7	39.8	1.000	1.304	1.360	1.330	1.219	1.164
Michigan.....	32.3	34.4	38.9	40.8	35.8	31.2	1.000	1.065	1.204	1.263	1.108	.966
Minnesota.....	25.5	26.7	40.4	41.7	43.9	48.6	1.000	1.047	1.584	1.635	1.722	1.906
Montana.....	28.6	32.7	22.6	32.5	24.8	36.9	1.000	1.143	.790	1.136	.867	1.290
Nebraska.....	37.4	30.5	32.8	45.7	38.8	35.6	1.000	.816	.877	1.222	1.037	.952
New Jersey.....	24.9	23.8	28.4	33.9	41.4	43.5	1.000	.956	1.141	1.361	1.663	1.747
New Mexico.....	22.7	39.3	28.1	32.7	38.9	60.1	1.000	1.731	1.238	1.441	1.714	2.648
Oklahoma.....	30.1	31.3	41.1	39.8	43.7	37.4	1.000	1.040	1.365	1.322	1.452	1.243
Rhode Island.....	28.2	31.0	32.8	34.8	28.0	25.6	1.000	1.099	1.163	1.234	.993	.908
South Dakota.....	29.2	43.5	38.5	44.4	36.4	33.9	1.000	1.182	1.318	1.521	1.247	1.161
Tennessee.....	30.0	30.8	35.5	31.4	33.6	38.0	1.000	1.027	1.183	1.047	1.120	1.267
Texas.....	28.3	29.8	33.7	34.7	45.3	43.8	1.000	1.053	1.191	1.226	1.601	1.548
Utah.....	39.2	49.1	53.3	48.9	61.1	36.8	1.000	1.253	1.360	1.247	1.559	.939
Vermont.....	32.1	32.1	38.4	46.5	42.7	36.2	1.000	1.000	1.196	1.449	1.330	1.128
Virginia.....	23.2	33.4	32.1	38.2	37.5	37.8	1.000	1.440	1.384	1.647	1.616	1.629
Wisconsin.....	28.4	29.4	38.1	39.7	39.1	40.8	1.000	1.035	1.342	1.398	1.377	1.437

¹ 1920, year in which compensation law originally became effective, used as base year.

TABLE 71: COMPARISON OF POLICY YEAR INDEMNITY AMENDMENT FACTORS, NEW YORK AND OTHER STATES, FOR THE POLICY YEARS 1919-1924
(Source: National Council on Compensation Insurance)

State	Indemnity Amendment Factors						Index Numbers of Each Policy Year's Law Benefit Level to 1919 as Basis					
	1919	1920	1921	1922	1923	1924	1919	1920	1921	1922	1923	1924
New York	1.205	1.138	1.130	1.132	1.127	1.040	1.000	1.059	1.066	1.064	1.069	1.159
Alabama	..	..	1.000	1.000	1.000	1.000	..	1.000 ¹	1.000	1.000	1.000	1.000
California	1.015	1.007	1.008	1.007	1.007	1.006	1.000	1.008	1.007	1.008	1.008	1.009
Colorado	1.188	1.176	1.187	1.172	1.029	1.000	1.000	1.010	1.001	1.014	1.155	1.188
Connecticut	1.051	1.020	1.014	1.012	1.019	1.018	1.000	1.030	1.036	1.039	1.031	1.032
Georgia	..	..	1.052	1.037	1.007	1.000	..	..	1.000 ²	1.014 ²	1.045	1.052
Idaho	1.123	1.078	1.006	1.000	1.000	1.000	1.000	1.042	1.116	1.123	1.123	1.123
Illinois	1.156	1.149	1.069	1.056	1.059	1.050	1.000	1.006	1.081	1.095	1.092	1.101
Indiana	1.006	1.000	1.000	1.000	1.000	1.000	1.000	1.006	1.006	1.006	1.006	1.006
Iowa	1.028	1.004	1.006	1.005	1.006	1.002	1.000	1.024	1.022	1.023	1.022	1.026
Kansas	1.000	1.000	1.000	1.000	1.000	1.000	1.000	1.000	1.000	1.000	1.000	1.000
Kentucky	1.048	1.006	1.000	1.000	1.000	1.000	1.000	1.042	1.048	1.048	1.048	1.048
Louisiana	1.209	1.125	1.101	1.097	1.085	1.021	1.000	1.075	1.098	1.102	1.114	1.184
Maine	1.273	1.207	1.061	1.044	1.046	1.044	1.000	1.055	1.200	1.219	1.217	1.219
Maryland	1.496	1.047	1.010	1.010	1.010	1.006	1.000	1.429	1.481	1.481	1.481	1.487
Massachusetts	1.164	1.147	1.147	1.126	1.064	1.009	1.000	1.015	1.015	1.034	1.094	1.154
Michigan	1.090	1.022	1.003	1.000	1.000	1.000	1.000	1.067	1.087	1.090	1.090	1.090
Minnesota	1.494	1.399	1.072	1.038	1.011	1.000	1.000	1.068	1.394	1.439	1.478	1.494
Montana	1.160	1.121	1.130	1.125	1.096	1.087	1.000	1.035	1.027	1.031	1.058	1.067
Nebraska	1.068	1.043	1.008	1.000	1.000	1.000	1.000	1.024	1.060	1.068	1.068	1.068
New Jersey	1.471	1.416	1.386	1.336	1.061	1.024	1.000	1.039	1.061	1.101	1.386	1.437
New Mexico	1.102	1.033	1.008	1.000	1.000	1.000	1.000	1.067	1.093	1.102	1.102	1.102
Oklahoma	1.122	1.067	1.103	1.096	1.009	1.000	1.000	1.052	1.017	1.024	1.112	1.122
Rhode Island	1.160	1.129	1.042	1.034	1.036	1.036	1.000	1.027	1.113	1.122	1.120	1.120
South Dakota	1.142	1.093	1.009	1.000	1.000	1.000	1.000	1.045	1.132	1.142	1.142	1.142
Tennessee	1.180	1.190	1.183	1.154	1.021	1.000	1.000	.992	.997	1.023	1.156	1.180
Texas	1.166	1.215	1.157	1.113	1.014	1.000	1.000	.960	1.008	1.048	1.150	1.166
Utah	1.038	1.006	1.001	1.000	1.000	1.000	1.000	1.032	1.037	1.038	1.038	1.038
Vermont	1.075	1.076	1.006	1.000	1.000	1.000	1.000	.999	1.069	1.075	1.075	1.075
Virginia	1.217	1.086	1.048	1.027	1.010	1.001	1.000	1.121	1.161	1.185	1.205	1.216
Wisconsin	1.390	1.309	1.199	1.163	1.043	1.023	1.000	1.062	1.159	1.195	1.333	1.359

¹1920, year in which compensation law originally became effective, used as base year.

experiencing greater increases than that of 41.5% for New York, but when a comparison is made with the experience differentials as given in Table 65, it will be seen that, in spite of these larger increases in the several states, the actual costs in New York are still ahead of those for any other state.

Table 71 shows the law amendment factors by which the losses which occurred in each of the six years would have to be modified to bring the losses to the cost level of the present law in each state and the index numbers, with policy year 1919 as a base, which measure for each state the level of law benefit costs in terms of the policy year 1919 level. Ten states show greater increases than New York, but the comparison of the benefit scales of the several laws, as made in Table 65, shows that these states are still far behind New York in liberality.

Table 72 compares the change in the cost of compensation in the several states, with the effect of law amendments eliminated. The index numbers in this table were obtained by dividing the index numbers in Table 70, showing the trend of indemnity costs without regard to causes of changes in these costs, by the index numbers in Table 71, which show the trend of law benefit costs. In this manner, the trend of elements which affect indemnity costs, other than the calculated effect of law amendments, was obtained. Among the elements included in Table 72 are such items as changes in the liberality of statutory administration, changes in accident severity and frequency, and increasing familiarity with the compensation law on the part of injured workers. Eleven states are shown as experiencing greater increases than New York. All of these states are located either in the South or in the Southwest, and are far below New York as regards actual cost levels, in spite of the larger increases shown in this table.

It is obvious from these tables that throughout the United States the trend of compensation costs has been consistently upward and that in a number of instances, both for individual factors and for all factors combined, New York's rate of increase has been exceeded. In spite of this fact, the original liberality of the New York law, combined with the liberaliz-

318 WORKMEN'S COMPENSATION IN NEW YORK

ing amendments which have been made since the law was enacted, have placed the scale of benefits and the actual costs for New York well in advance of those for any other state.

TABLE 72: COMPARISON OF TREND OF INDEMNITY COST ELEMENTS OTHER THAN CALCULATED EFFECT OF AMENDMENTS TO LAW, NEW YORK AND OTHER STATES, POLICY YEARS 1919-1924

(Source: National Council on Compensation Insurance)

State	1919	1920	1921	1922	1923	1924
New York.....	1.000	.879	.997	1.069	1.139	1.221
Alabama.....	1.000 ¹	1.000 ¹	1.391	1.234	1.365	1.365
California.....	1.000	.938	.975	.912	.930	1.020
Colorado.....	1.000	.896	1.190	1.304	1.193	1.336
Connecticut.....	1.000	1.069	1.174	1.137	1.291	1.199
Georgia.....	..	..	1.000 ²	1.044	1.302	1.323
Idaho.....	1.000	1.298	1.328	1.414	1.630	1.599
Illinois.....	1.000	.911	.941	.963	.995	.829
Indiana.....	1.000	.984	1.038	1.089	1.079	.910
Iowa.....	1.000	.879	1.024	1.113	1.109	.943
Kansas.....	1.000	1.028	1.163	1.213	1.243	1.260
Kentucky.....	1.000	1.016	.946	1.276	1.044	1.044
Louisiana.....	1.000	.940	1.129	1.201	1.295	1.330
Maine.....	1.000	1.065	1.023	1.203	1.015	.965
Maryland.....	1.000	.971	1.257	1.182	1.173	1.227
Massachusetts.....	1.000	1.285	1.340	1.286	1.114	1.009
Michigan.....	1.000	.998	1.108	1.159	1.017	.886
Minnesota.....	1.000	.980	1.136	1.136	1.165	1.276
Montana.....	1.000	1.104	.769	1.102	.819	1.209
Nebraska.....	1.000	.797	.827	1.144	.971	.891
New Jersey.....	1.000	.920	1.075	1.236	1.200	1.216
New Mexico.....	1.000	1.622	1.133	1.308	1.555	2.403
Oklahoma.....	1.000	.989	1.342	1.291	1.306	1.108
Rhode Island.....	1.000	1.070	1.045	1.100	.887	.811
South Dakota.....	1.000	1.131	1.164	1.332	1.092	1.047
Tennessee.....	1.000	1.035	1.187	1.023	.969	1.074
Texas.....	1.000	1.097	1.182	1.170	1.392	1.328
Utah.....	1.000	1.214	1.311	1.201	1.502	.905
Vermont.....	1.000	1.001	1.119	1.348	1.237	1.049
Virginia.....	1.000	1.285	1.192	1.390	1.341	1.340
Wisconsin.....	1.000	.975	1.158	1.170	1.033	1.057

¹ 1920, year in which compensation law originally became effective, used as base year.

² 1921, year in which compensation law originally became effective, used as base year.

CONCLUSION

It is seldom that data assembled from a variety of sources lead with such unanimity to a single conclusion as the data on workmen's compensation. An analysis of the statistical material shown on the preceding pages proves conclusively that, all factors given their proper weight, the New York workmen's compensation law is the most liberal in its provision for injured workers and that its administration has been more costly to employers in New York than in any other state. It has been shown that premium rates in New York State have increased steadily. Total costs have increased so much more rapidly than employment that the average compensation cost per employee has also shown a notable increase. Not only in New York State but throughout the country there is a tendency towards progressive liberalization of compensation benefit scales with correspondingly increased costs to employers, and there is nothing to indicate that this tendency will not continue in the future.

It has been the practice to consider compensation costs on the basis of exposure. It has recently been suggested that a more proper criterion would be the compensation cost per unit of product, and that on this basis costs would probably show no increase. It is well established that production per wage earner employed has substantially increased during recent years owing to the progressive mechanization of industry, more effective planning and supervision, and by effecting economies in a number of ways. The result has been that, with an employment little greater than a decade ago, industry is producing considerably more goods, although just how much more it is not possible to determine accurately. It is a fair supposition, although not yet satisfactorily proved, that compensation costs have not increased more rapidly than per capita production, and perhaps not so fast; in which case, compensation costs at the present time actually would be no greater per unit of product than they were ten years ago and perhaps not as great. Since a fair basis of expense charges is the cost per unit of product, the conclusion follows that actual compensation cost is no greater to the employer now than in the past.

The argument that compensation costs per unit of product have not increased necessarily assumes the maintenance of prices in the face of a more economical production. For industries where the price per unit of product has declined during the period under consideration, it would be unfair to believe that a fixed charge for compensation per unit of product would not involve greater expense to the employer, since the fixed charge would become an increasing percentage of the unit's value. While a large number of standard commodities have not materially changed in price since the readjustment period of 1920-1922, there are many commodities, of which the radio is a striking example, in which quantity production has resulted in substantially reduced prices.

This point of view, shifting the consideration of compensation costs from the basis of exposure to that of the cost per unit of product, is a rather radical departure from the usual line of reasoning. The employer probably instinctively considers compensation costs on the basis of the number of wage earners employed, since he regards compensation payments as in lieu of wages. Furthermore, accidents are the result of exposure to hazard and have quite logically been measured in terms of this exposure. If the employer is able, by means of capital expenditure or through better management, to reduce the number of wage earners actually required or to effect the same result by increasing production, he would seem to be entitled to the benefits which accrue in the form of lower direct and indirect costs per unit of product without having the profit margin reduced by a fixed, though in effect increasing, charge for compensation.

Whether compensation costs in terms of product and, consequently, of income actually have not increased remains to be proved. If this can be done satisfactorily it may help to reconcile employers to higher premium rates. However, there appear to be two conflicting tendencies involved. If compensation costs per unit of product have remained constant or declined, it has been due in a large measure to the increased per capita production made possible through the intensified mechanization of industry. At the same time it is becoming recognized that there is probably a fairly definite

correlation between mechanization and accident frequency and that the ratio of hazard to exposure increases progressively as mechanization is effected. Consequently, the increased substitution of mechanical for manual labor appears to increase the accident hazard per unit of exposure while it decreases it per unit of production.

The field of accurate accident and compensation statistics invites closer attention and study in the future than it has received in the past. Actuarial associations have made valuable contributions and have indicated several important aspects of the question which merit thorough study. State labor bureaus have made courageous attempts to cover the field more comprehensively, but have been handicapped by lack of funds and lack of cooperation on the part of employers. Until information is available in much more complete and detailed form than at present, it will be impossible to ascertain the exact facts relative to accident and compensation experience, and these facts are indispensable if the actual accident situation and trend are to be presented in their true proportions, and in a way which will make possible constructive remedial action.

CHAPTER VII

SUMMARY

COMPARISON OF NEW YORK COMPENSATION LAW WITH LAWS OF OTHER STATES

THE main purpose of this study was to compare the cost of workmen's compensation under the present New York compensation law with that under the laws of New York's chief competitor states. The New York law was analyzed and compared with the laws of forty-two other states in regard to its scope or coverage, the liberality of its benefit provisions and the character of its administration. It was found that, while theoretically the laws of many states compare favorably with the New York compensation law, in actual experience, when all elements affecting compensation cost are considered, the cost of compensation in New York is far greater than in any other industrial state. When the New York law is theoretically compared with the laws of industrially undeveloped states, it must be remembered that the practical effect of identical or similar benefit provisions in New York, where each benefit has a wide-spread application, is necessarily more pronounced than in a state like Arizona or North Dakota.

The New York compensation law and the laws of thirty-two other states cover both hazardous and non-hazardous industries. Workers engaged in agriculture are excluded in thirty states, including New York, while domestic servants do not come within the scope of the law in twenty-nine states, New York being one of them. New York and nine other states do not cover employments not for pecuniary gain. In certain states the law applies only to establishments which have a certain number of workers in their employ. This number varies from one to eleven employees. The New York law provides that establishments which have "less than four" workers in their employment shall not be covered.

Industrial disabilities are covered in the New York law as adequately as in any other state, except that those states which use the blanket or "Massachusetts" plan for compensating occupational diseases may, in theory at least, be considered as more liberal. Disabilities are defined in the various compensation laws either as "injuries" or as "accidents." The word "injury" is somewhat broader in its scope, since it covers occupational diseases adjudged to be caused or intensified by the employment, unless these are specifically excluded by the courts. Thirty-two states, including New York, use the word "accident" in defining disabilities. Occupational diseases are compensable in eleven states, either under the blanket or "Massachusetts" plan, or by the schedule plan which makes compensable only certain specifically enumerated diseases. The latter method is used in New York.

New York and thirty-six other states provide that injuries or accidents must arise "out of and in the course of employment." In this respect the scope of the New York law is broader than the laws of Ohio and Pennsylvania which allow for compensation of injuries and accidents occurring only "in the course of employment." Every state imposes certain conditions under which compensation may be withheld. Under the New York law and the laws of thirty-two other states accidents which arise from a "wilful intention on the part of the workman to injure himself or another" are not compensable. Twenty-eight states, among them New York, do not allow compensation for injuries or accidents which occurred while the claimant was in a state of intoxication. Accidents resulting from "wilful misconduct" are not compensable in sixteen states, including Connecticut, Massachusetts and Michigan, but not New York.

Comparison of Benefit Schedules

Benefit schedules used by the various states differ in so many respects that an exact comparison is practically impossible. Some states prescribe benefits in exact amounts or as proportions of the wage, while others employ sliding scale provisions in which the amount of compensation is determined by the number and character of dependents, if

324 WORKMEN'S COMPENSATION IN NEW YORK

there are any, or by some other consideration. Certain benefit schedules may be more liberal than others in regard to the amount of compensation allowed in the form of wage percentages until the weekly maximum is reached; but this liberality may be limited by low maximum weekly payments. The Connecticut compensation law provides for the highest weekly maximum of \$21. California comes next with \$20.83. New York and five other states, not one of which is a prominent industrial state, provide for a weekly maximum of \$20¹ for permanent total, permanent partial and temporary total disabilities. The lowest weekly maximum payment for any benefit is \$7.50 given in Montana for permanent partial disabilities.

Although the weekly maximum payment provided by the New York law is now lower than in Connecticut, the provisions of the New York law are more liberal until the maximum payment is reached. In Connecticut, an injured worker is paid only 50% of his average weekly wage as long as that does not amount to more than \$21, while in New York he receives an allowance of 66 $\frac{2}{3}$ % of his weekly wage until the maximum payment of \$20 is reached. At a wage of \$30 a week, an injured worker would receive as weekly compensation \$20 in New York, as against \$15 in Connecticut. At a wage of \$40 the compensation in both states would be \$20. At \$50 a week the weekly maximum payments would become effective in both states, and the Connecticut law would become more liberal than New York's. The allowance of 66 $\frac{2}{3}$ % of the average weekly wage is the highest weekly percentage and is used by fourteen other states, including three of New York's chief competitors, Massachusetts, New Jersey and Ohio. But it is applied to every type of benefit only in New York, Maine, Minnesota, Nebraska, North Dakota and Ohio.

Many states do not limit the amount of aggregate payments for any benefit. This is true of New York except in the case of temporary total disabilities for which the total amount of compensation is limited to \$3,500.² At the present time this is the lowest maximum compensation for a temporary total disability provided by any state which uses the

¹ See footnote, page 22.

² See footnote, page 22.

system of limiting the aggregate amount of payments for these disabilities to a fixed sum, the highest being \$7,200 in Nevada. New York is one of twenty-eight states which do not limit the amount of payments for death benefits; one of twenty-six which set no limit for permanent total benefits, while New York and twenty-nine other states do not limit the amount of compensation for permanent partial disabilities.

The number of states which set no time limit for payments under any of the benefits, except in the specified injury schedule, is very small. New York is one of them. In five states, New York, Nevada, North Dakota, Oregon, Washington and West Virginia, death benefits are paid to widow or dependent widower during life or until remarriage. It is interesting that none of these states, with the exception of New York, is highly developed industrially. New York, Illinois, Ohio and fourteen other states set no time limit for permanent partial disabilities, while only five states, New York and Ohio among them, set no time limit for permanent total disabilities. Of the large eastern industrial states, New York is the only one which sets no time limit for temporary total disabilities; but in this respect the liberality of the New York law is somewhat offset by the provision which limits the aggregate amount of these benefits to \$3,500.¹

Comparison of Provisions for Waiting Periods and Retroactive Clauses

The length of the waiting period, during which no compensation is paid, varies under the different compensation laws from four days to two weeks, while the law of Oregon does not provide for a waiting period. In New York and twenty-seven other states the length of the waiting period is one week; four states have four days, one has five days, five have ten days, and four states have two weeks. The seven-day waiting period is provided in all the states which are New York's chief competitors, with the exception of Pennsylvania which is in the ten-day group. Twenty-three states provide that compensation for the waiting period shall be paid if disability continues for a specified length of time.

¹ See footnote, p. 22.

326 WORKMEN'S COMPENSATION IN NEW YORK

The length of these retroactive periods varies from one to seven weeks. In New York and New Jersey, retroactive clauses become effective after seven weeks.

In one respect the New York compensation law differs from the laws of other great industrial states. The New York law requires a hearing of every case before a referee. While this provision insures the taking into account of all the evidence that the claimant can produce in his favor and tends to increase the liberality of the law, it imposes a great burden upon the administrative organization. In view of a relatively large number of non-serious cases in which the period of disability is less than one and a half weeks, the referees are not able thoroughly to investigate cases of longer duration which involve large amounts of expenditure.

This short and very general comparison of the technical provisions of the New York compensation law with the laws of other states indicates clearly that the employees of New York are as well protected against industrial accidents as in any other state and that in many respects the New York law is more liberal than the laws of New York's chief competitor states. But while a theoretical comparison of the various compensation laws is interesting, it does not tell us the whole story, for the practical effect of similar or identical benefit provisions varies greatly in the different states according to frequency and severity of accidents, and according to differences in the administration of the law.

Comparison of Compensation Costs

When considered from all points of view, the cost of compensation in New York is both relatively and absolutely higher than in any other large industrial state. If the present Pennsylvania rates were applied to New York experience, the cost of compensation to New York employers would be only 35% of the present cost. If the Ohio rates were in effect in New York, the amount of premiums received would be 44% less than necessary to meet the losses of New York insurance carriers.

A comparison of the average cost per case in New York with the cost in the competing states shows again the greater cost of compensation in New York. In only one instance is

the average cost for any type of injury greater than in New York: Wisconsin provides a higher scale of benefits for major permanent partial disabilities. Medical costs per case are higher in Connecticut and Illinois than in New York.

Since 1914-15 the general level of compensation premium rates in New York has increased 48.2%. Of this increase 30.1% was due to amendments in the law, 14.6% to increased loading expense and 3.5% to all other causes. While, in general, rates have increased greatly over those initially in effect, in some cases the present rates are lower, since accident costs in individual classifications vary according to accident frequency and severity and since in some cases the original rates were set too high. The strongest influence on rates since 1914-15 has been the great increase in payrolls. If wage levels had remained stationary and other factors remained unchanged all the rates would have been much higher. The increase in New York rates has been, except in a small number of classifications, considerably higher than in any other industrial state. Slightly higher increases for four industrial classifications occurred in Wisconsin; for one classification in New Jersey, Connecticut and Indiana. In all other classifications, more than seventy in number, the increase in New York rates has been greater than in any competing state.

A comparison of the increase in compensation costs in thirty-one states, which come under the jurisdiction of the National Council on Compensation Insurance, for the policy years 1919-24 shows that the actual cost of compensation is greater in New York than in any of these states, although the increase in cost during that period, due to certain component parts of the total costs, has been greater in a number of states than in New York. In six states, Utah, Nebraska, Texas, Oklahoma, Montana and Minnesota, medical costs are actually higher than in New York, but none of these is primarily an industrial state. The increase in indemnity costs, exclusive of medical items, has been greater in ten states than in New York, but on the basis of actual experience the present New York costs are much higher. In ten states the increase in cost due to the law amendment factors has exceeded that of New York, but with the exception of

328 WORKMEN'S COMPENSATION IN NEW YORK

New Jersey and Wisconsin these states are not important industrially. The increase in compensation costs, when the effect of law amendments is eliminated, has been greater in eleven states than in New York, but all these states are located in the South or Southwest and their actual costs are far below New York cost levels.

An analysis of compensation cost and wage cost per wage earner, based on the original data compiled by the Conference Board, shows that in general the average compensation cost per wage earner has increased more rapidly than the average wage cost per wage earner. In certain industries, notably chemicals and textiles, the increase in compensation cost per wage earner has not kept pace with the increase in wage costs. These trends are, in general, in harmony with the movement of manual rates, but exact correspondence cannot be expected in view of the fact that actual costs are affected by schedule and experience rating through which the manual rate for particular establishments may be considerably modified.

While the cost of compensation in New York State remains higher than in any other state, it has not been increasing so rapidly as in certain other states. During the five-year period 1919-24 the total cost of compensation in New York increased 44%, as against 158% in New Mexico, 93% in Maryland, 89% in Virginia and 75% in New Jersey. During the same period six other states showed greater increases in the cost of compensation than New York, but neither of these is primarily an industrial state. The remarkable increase in the cost of compensation in New Mexico and Virginia is explained by the fact that the laws in these two states became effective in 1917 and 1919 respectively, and the increase in cost was no larger than was to be expected during the first few years of their experience with workmen's compensation insurance.

WORKMEN'S COMPENSATION INSURANCE IN NEW YORK STATE

Under the New York compensation law employers subject to the law must secure the payment of compensation by insurance with a stock company, a mutual company, the state

fund or by self-insurance. Mutual companies offer insurance at cost, returning any surplus over the requirements of safe operation to insurers in the form of dividends. On the other hand, if the premiums collected are insufficient to meet the necessary payments, mutual companies may assess their insurers to make up the deficiency. Stock companies are operated for the profit of their stockholders. In return for a somewhat higher cost of insurance, they offer to their clients an extensive and integrated system of agency service, as well as the assurance that there will be no future assessments. The state fund is operated by the state in competition with other forms of insurance, and its rates are about 15% below those which are offered by private carriers. The state fund returns to insurers any surplus over requirements in the form of dividends. The privilege of self-insurance is granted to companies which satisfy the Industrial Commissioner as to their ability to meet compensation payments. These companies are required to deposit with the state a certain sum in the form of securities as a guarantee of their ability to take care of their future compensation obligations.

The volume of workmen's compensation insurance in New York State increased from \$12 millions in 1914-15 to nearly \$55 millions in 1924-25. Of this amount 68.6% was written by stock companies, 23.6% by mutuals and 7.8% by the state fund. There were fifty-eight insurance companies writing compensation insurance in New York State in the fiscal year 1925-26. In that year three stock companies, three mutual companies and the state fund accounted for 48% of the earned premiums.

A distinct trend toward mutual companies is noticed among the establishments which have changed their original form of insurance. Of the 468 manufacturing companies which replied to the Conference Board's questionnaire on workmen's compensation, 227 made no change from their original form of insurance. Of these 227 establishments, 52% were insured with mutual insurance companies; 35% with stock companies, 8% with the state fund and 5% were self-insured. Of the 241 companies which for some reason or other decided to change their form of insurance 51% went over to mutual companies, 21% became insured with the state fund,

330 WORKMEN'S COMPENSATION IN NEW YORK

10% changed to stock companies, and 18% became self-insured. As a rule self-insurance is profitable only for the larger companies. The average number of employees in self-insured establishments, as reported to the Board, was 1,460, as against 288 employees in companies insured with mutuals and 269 with stock companies, while the average employment of companies insured with the state fund was 180.

Although the state fund is able to quote rates 15% below those offered by private carriers, the Conference Board has found no sentiment on the part of employers in favor of an exclusive or monopolistic state fund in New York State. During the first two years of its existence, the state fund accounted for 11.04% of the total earned premiums from workmen's compensation insurance in New York State. In the following year, 1916-17, this proportion increased to 12.78%. After this high point, a gradual decline followed until the low point was reached in 1921-22, when the state fund earned only 7.12% of the total earned premiums. In the fiscal year 1924-25 this figure rose to 8.4%. For the entire period from 1914-15 to 1924-25 the state insurance fund averaged 8.8% of the premiums earned. At the present time only 14% of the companies which reported to the Board are insured with state fund.

JUDICIAL INTERPRETATION OF NEW YORK COMPENSATION LAW

The scope of the New York law has been somewhat broadened by judicial interpretation. In general the courts have held that any unanticipated event causing injury may be considered an accident and that if the event occurred while the injured worker was engaged in some activity related directly or indirectly to his employment, compensation for resulting disability may be awarded. In accord with this interpretation of the phrase "arising out of and in the course of employment," awards have been affirmed for injuries received during the noon interval or when the employee was on his way to or from work, although in the latter case compensation has been limited, with certain exceptions, to accidents occurring on the premises of the employer. Likewise, accidents outside the establishment of the employer have

been held to have arisen out of the employment, provided the injured worker was at the time serving the interests of his employer.

The employer is obligated to provide compensation for injuries to his employees even though such injuries are the result of negligence on the part of the employee. In cases where negligence has been combined with disobedience of the rules of the plant, it has sometimes been held that the circumstances under which the accident occurred showed that it did not arise out of and in the course of employment. But such disobedience has been held to prevent compensation only when the rules were strictly enforced and when they operated to limit the sphere of the worker's employment.

The problem of the causal connection between accidental injury and disease has been troublesome. The greatest difficulty exists in cases where a disease, pre-existent at the time of injury, subsequently develops or increases the disability of the injured employee. The entire burden of the consequential disability is placed upon the employer wherever medical testimony can be produced, sufficient to support the finding of a causal relationship between the accident and the subsequent physical impairment. The employer's liability for the ultimate consequences of an injury includes those cases where the failure of the injured worker to accept or continue medical treatment contributes to the aggravation of the disability. This liability has recently been limited by the courts which previously exhibited a reluctance to reverse awards in such cases.

A tendency on the part of referees to be liberal and at times over-indulgent in their attitude toward claimants seems to be indicated by the number of awards modified or reversed upon appeal, because the courts considered excessive the amounts of compensation awarded. One type of excessive award is that resulting from a miscalculation of the earnings of the injured worker at the time of the accident. Apparently in only one case has the miscalculation been to the disadvantage of the claimant. That sympathy for claimants has sometimes influenced the decisions of referees is also indicated by a number of cases in which awards have been made on the basis of extremely unsubstantial evidence. Under

332 WORKMEN'S COMPENSATION IN NEW YORK

the law, hear-say evidence may be accepted in compensation proceedings, but the courts have recognized that the granting of compensation solely on the basis of such evidence would open the way to fraud. It has therefore been the policy of the courts to insist that the hear-say evidence be supported by other evidence in order to justify an award.

There is relatively little evidence in the decisions in appealed cases of deliberate unfairness on the part of referees in their conduct of compensation hearings. In one instance it was found that a deputy commissioner had indulged in sarcasm, sneers and intimidation at the expense of the employer's witnesses and counsel. In a few other cases the referee excluded substantial evidence against the claimant or was otherwise arbitrary in his rulings. In some instances a possibly inadvertent act on the part of a referee, such as the inclusion in the record of written statements or reports presented subsequent to the hearing, is shown. In all there appear to be not more than fifteen cases in which the courts have taken judicial notice of arbitrary or unfair conduct on the part of referees. In addition there are a few cases in which the failure on the part of the claimant to give notice of the injury to his employer has been excused without reason, but this appears to have been done on the theory that the requirement of notice was a mere formality which might be dispensed with without injury to the parties concerned, a theory which fortunately the courts have refused to uphold.

On the whole, a study of the court decisions in compensation cases indicates that, while the burden of responsibility borne by the employer has been increased, the administration of the law has not been unreasonable or unfair. But a large part of the credit for the equitable character of that administration is due to the restraint imposed by the judicial review of compensation cases. The courts have not only provided an agency for determining and defining the scope of the law and expounding the legal principle of its application in intricate cases where questions of extraterritoriality or interstate commerce were involved, but they have also served to protect the interests of employers and insurance carriers against encroachment by an administrative authority which of necessity, in its endeavor to bring out the facts,

SUMMARY

333

must act not only as judge but also as advocate on behalf of unrepresented claimants. The very nature of the proceedings in compensation cases tends to produce an attitude somewhat more favorable to claimants than to the opposing parties. The corrective power of judicial review is needed to maintain a proper equilibrium and to insure an impartial administration of the law.

APPENDIX

COMPARISON OF PROVISIONS OF WORKMEN'S COM-
PENSATION LAWS IN THE VARIOUS STATES

336 WORKMEN'S COMPENSATION IN NEW YORK

TABLE 73: COMPULSORY AND ELECTIVE COMPENSATION LAWS, BY STATES, PRIVATE EMPLOYMENTS

Compensation Compulsory	Compensation Elective	
Arizona ¹	Alabama	Nebraska
California ²	Colorado	Nevada
Idaho	Connecticut	New Hampshire ⁴
Illinois	Delaware	New Jersey
Maryland	Georgia	New Mexico
New York	Indiana ³	Oregon
North Dakota	Iowa	Pennsylvania
Ohio	Kansas	Rhode Island
Oklahoma	Kentucky	South Dakota
Utah	Louisiana	Tennessee
Washington	Maine	Texas
Wyoming	Massachusetts	Vermont
	Michigan	Virginia
	Minnesota	West Virginia ⁶
	Missouri	Wisconsin
	Montana	

¹ Compulsory as to employers and some employees. Elective as to employees in hazardous industries.

² Elective as to farm labor, domestic service and other excepted employments.

³ Compulsory as to coal mining.

⁴ Injured employees have election *after* injury to accept compensation or to sue for damages.

⁶ Employers only have the election.

NOTE: Based on F. Robertson Jones: "Digest of Workmen's Compensation Laws," Ninth Edition, pp. 6, 7.

COMPARISON OF COMPENSATION LAWS 337

TABLE 74: FORMS OF INSURANCE PROVIDED FOR BY STATES

State Fund		Private Insurance	Self-Insurance
Exclusive	Competitive		
	Arizona	Alabama	Alabama
	California	Arizona	Arizona
	Colorado	California	California
		Colorado	Colorado
		Connecticut	Connecticut
		Delaware	Delaware
		Georgia	Georgia
	Idaho	Idaho	Idaho
		Illinois	Illinois
		Indiana	Indiana
		Iowa	Iowa
		Kansas	Kansas
		Kentucky	Kentucky
		Louisiana	Louisiana
		Maine	Maine
	Maryland	Maryland	Maryland
		Massachusetts	
	Michigan	Michigan	Michigan
		Minnesota	Minnesota ¹
	Montana	Montana	Montana
		Nebraska	Nebraska
Nevada			
		New Hampshire	New Hampshire
		New Jersey	New Jersey
		New Mexico	New Mexico
		New York	New York
North Dakota	New York		
Ohio			Ohio
Oregon		Oklahoma	Oklahoma
	Pennsylvania	Pennsylvania	Pennsylvania
		Rhode Island	Rhode Island
		South Dakota	South Dakota
		Tennessee	Tennessee
		Texas	
	Utah	Utah	Utah
		Vermont	Vermont
	Virginia ²	Virginia	Virginia
Washington			West Virginia ²
West Virginia			Wisconsin
Wyoming		Wisconsin	

¹ Mentioned, but no provision made.

² Employers on conditions may be allowed to carry their own risks and thereupon insure in private companies.

NOTE: The analytical headings are from C. Hookstadt: Bulletin of U. S. Bureau of Labor Statistics, No. 275, p. 16.

TABLE 75: SCOPE OF COMPENSATION LAWS BY STATES,¹ PRIVATE EMPLOYMENTS

Inclusions		Exclusions					
Hazardous and Non-hazardous Employments	Hazardous Employments	Numerical Exceptions	Agriculture	Domestic Service	Casual Labor and Employment not for Employer's Business	Employments not Conducted for Gain	Other Employments
Alabama		Alabama: less than 16	Alabama	Alabama	Alabama		Alabama: common carriers engaged in interstate commerce
Arizona		Arizona: less than 3	Arizona: not employed in use of machinery California	Arizona	Arizona		Arizona: interstate or foreign commerce
California				California	California		California: watchmen paid by subscription; ranch labor
399 Colorado		Colorado: less than 4	Colorado	Colorado	Colorado	Colorado	Colorado: common carriers in interstate commerce; ranch laborers
Connecticut		Connecticut: less than 5; abrogation of defenses for non-acceptance does not apply			Connecticut: abrogation of defenses for non-acceptance does not apply		Connecticut: outworkers; members of employer's family residing with him unless wages or salary are on payroll; employees in interstate or foreign commerce if covered by laws of U. S.
Delaware		Delaware: less than 5	Delaware	Delaware	Delaware		Delaware: outworkers
Georgia		Georgia: less than 10	Georgia	Georgia	Georgia	Georgia	Georgia: employees of public charities; common carriers in interstate commerce by steam power

Idaho			Idaho	Idaho	Idaho	Idaho	Idaho: charitable organization employees; outworkers; members of employer's family dwelling in house
	Illinois						Illinois: employers whose exclusive liability for personal injuries is provided by law of U. S.
Indiana			Indiana	Indiana	Indiana	Indiana	Indiana: R. R. employees in train service unless they and employers elect to come under act, and those provided for by laws of U. S.
Iowa			Iowa	Iowa	Iowa	Iowa	Iowa: purely clerical employees or persons engaged as personal representatives; those in interstate and foreign commerce not covered by laws of congress
	Kansas: employees in mines without regard to number employed; other dangerous enumerated occupations	Kansas: less than 5	Kansas		Kansas: not for purpose of business	Kansas: trade or gain	Kansas: business or employments in interstate commerce not subject to legislative powers of state
Kentucky		Kentucky: less than 3	Kentucky: except operators of threshing machines	Kentucky			Kentucky: employees on steam railways and common carriers except those provided for in Federal Liability Act

¹ Headings based on C. Hookstadt, Bureau of Labor Statistics Bulletin, No. 275, pp. 20, 21.

TABLE 75: SCOPE OF COMPENSATION LAWS BY STATES,¹ PRIVATE EMPLOYMENTS—(Continued)

Inclusions		Exclusions					
Hazardous and Non-hazardous Employments	Hazardous Employments	Numerical Exceptions	Agriculture	Domestic Service	Casual Labor and Employment Not for Employer's Business	Employments Not Conducted for Gain	Other Employments
Maine	Louisiana: enumerated or decided by court to be hazardous	Maine: less than 6; abrogation of defenses for non-acceptance does not apply	Maine	Maine	Maine	Maryland	Louisiana: common carriers in interstate or foreign commerce
	Maryland: partly enumerated		Maryland	Maryland	Maryland		Maine: masters of and seamen on vessels in interstate or foreign commerce; those covered by laws of U. S.; abrogation of defenses to non-electing employers does not apply to logging operations
Massachusetts			Massachusetts	Massachusetts	Massachusetts: not in course of employer's business		Maryland: country blacksmiths, wheelwrights and similar rural employments
Michigan			Michigan: abrogation of defense for non-acceptance does not apply	Michigan: abrogation of defense for non-acceptance does not apply			Massachusetts: masters and seamen on vessels in foreign or interstate commerce
							Michigan: those engaged in interstate or foreign commerce covered by laws of U. S.

Minnesota			Minnesota: ex- cept commer- cial threshers balers	Minnesota	Minnesota	Minnesota: employees of common carriers by steam railroads
Missouri	Missouri: when 10 or less are em- ployed in haz- ardous occu- pation, Com- mission may require elec- tion. Montana: enumerated	Missouri: less than 11	Missouri	Missouri	Missouri	Missouri: family chauffeurs; outworkers; employees receiving over \$3,600 annually; those exclusively covered by federal law
Nebraska			Montana	Montana	Montana	Montana: railroads engaged in interstate commerce
			Nebraska	Nebraska	Nebraska	Nebraska: employees of railroads engaged in interstate or foreign commerce
Nevada			Nevada	Nevada	Nevada	Nevada: stock or poultry raising
	New Hamp- shire: in man- ual or me- chanical labor in industries enumerated	New Hamp- shire: less than 5				
New Jersey					New Jersey: casual only New Mexico	New Mexico: interstate commerce not subject to legislative power of state
	New Mexico: enumerated	New Mexico: less than 4				New Mexico: interstate or foreign commerce cov- ered by laws of congress
New York		New York: less than 4	New York	New York	New York	

¹Headings based on C. Hookstadt, Bureau of Labor Statistics Bulletin, No. 275, pp. 20, 21.

TABLE 75: SCOPE OF COMPENSATION LAWS BY STATES,¹ PRIVATE EMPLOYMENTS—(Continued)

Inclusions		Exclusions					
Hazardous and Non-hazardous Employments	Hazardous Employments	Numerical Exceptions	Agriculture	Domestic Service	Casual Labor and Employment Not for Employer's Business	Employments Not Conducted for Gain	Other Employments
North Dakota			North Dakota	North Dakota	North Dakota		North Dakota: employees of common carriers by steam railroad; executive officers of business concerns getting over \$2,400
Ohio		Ohio: less than 3			Ohio		Ohio: those in interstate or foreign commerce for whom compensation is established by Congress
	Oklahoma: enumerated	Oklahoma: less than 2	Oklahoma			Oklahoma	Oklahoma: employees on railroads in interstate commerce
	Oregon: specified		Oregon				Oregon: employees on railroads in interstate commerce
Pennsylvania			Pennsylvania	Pennsylvania	Pennsylvania		Pennsylvania: outworkers
Rhode Island		Rhode Island: less than 6	Rhode Island	Rhode Island	Rhode Island		Rhode Island: employees receiving more than \$3,000 a year
South Dakota			South Dakota: except operators of threshing machines, traction engines and separators	South Dakota	South Dakota		South Dakota: employments where laws of U. S. provide compensation in interstate or foreign commerce
Tennessee		Tennessee: less than 5	Tennessee	Tennessee	Tennessee		Tennessee: employees of common carriers in interstate commerce
Texas		Texas: less than 3	Texas	Texas	Texas		Texas: ranch laborers; masters and seamen on vessels in interstate and

							<p>employees of common carriers by railway; officers and directors of corporations</p>
Utah		Utah: less than 3	Utah	Utah	Utah		Utah: Interstate and foreign commerce
Vermont		Vermont: less than 11		Vermont	Vermont	Vermont	Vermont: employees receiving over \$2,000 a year, interstate and foreign commerce covered by laws of U. S.
Virginia		Virginia: less than 11	Virginia	Virginia	Virginia		Virginia: employees of common carriers engaged in interstate commerce; common carriers in interstate commerce or with District of Columbia
Washington:	enumerated						Washington: employees of common carriers by railroad engaged in interstate or foreign and intrastate commerce
West Virginia			West Virginia	West Virginia			West Virginia: persons prohibited by law from being employed; members of firm; officers or managers of corporations
Wisconsin		Wisconsin: less than 3	Wisconsin: abrogation of defenses for non-acceptance does not apply	Wisconsin	Wisconsin: not in course of employer's business		Wisconsin: railroad engaged as common carrier except by agreement
Wyoming:	enumerated		Wyoming	Wyoming	Wyoming	Wyoming	Wyoming: ranch horticultural labor; stock raising; employees clerical work not exposed to the hazards of the business, or an official

¹ Headings based on C. Hookstadt, Bureau of Labor Statistics Bulletin, No. 275, pp. 20, 21.

TABLE 76: LENGTH OF WAITING PERIODS, BY STATES

None (2)	3 Days (4)	5 Days (1)	One Week or 7 Days (28)		10 Days (4)	2 Weeks (4)
Oregon South Dakota	Maryland Missouri Utah Washington	Oklahoma	Arizona California Connecticut Georgia Idaho ¹ Illinois ² Indiana Kansas Kentucky Louisiana Maine Massachusetts Michigan Minnesota ⁴	Nebraska Nevada New Hampshire New Jersey ³ New York North Dakota Ohio Rhode Island Tennessee Texas Vermont West Virginia Wisconsin Wyoming ⁴	Colorado ⁷ New Mexico Pennsylvania Virginia	Alabama Delaware Iowa ⁶ Montana

¹ No waiting period by ruling of Commissioner, although law provides 10-day waiting period, retroactive at 6 weeks.

² 7 days if disability is less than 5 weeks; 3 days if disability extends 4 weeks; 2 days if for 5 weeks; 1 day if for 6 weeks; none if for 7 weeks.

⁴ No waiting period in permanent total cases.

⁴ In temporary total or partial cases only.

⁶ Day employee leaves work counted as one day.

⁷ In temporary total cases only.

⁷ Compensation for specific injury begins on date of actual loss.

⁸ No waiting period in permanent partial cases.

TABLE 77: DURATION OF RETROACTIVE PERIODS, BY STATES

1 Week or 7 Days (3)	2 Weeks (1)	3 Weeks (2)	4 Weeks (8)	5 Weeks (1)	6 Weeks (6)	7 Weeks (3)	No Retroactive Clauses (17)
Nevada New Hampshire North Dakota	Arizona *	Wisconsin ¹ Wyoming ¹	Alabama Connecticut ² Delaware Illinois Massachusetts ¹ Minnesota Missouri Rhode Island ¹	Iowa ²	Louisiana Michigan ² Montana Nebraska Tennessee Virginia ¹	Idaho ¹ New Jersey ¹ New York ¹	California Colorado ² Georgia Indiana Kansas Kentucky Maine Maryland New Mexico Ohio Oklahoma Pennsylvania Texas Utah Vermont Washington West Virginia

¹ If disability extends *beyond* the period indicated.

² After the 35th day compensation increased two-thirds for 5th, 6th and 7th weeks of disability.

³ Retroactive if death results from injury.

⁴ See footnote 2, p. 344.

⁵ See footnote 7, p. 344.

345

TABLE 78: MAXIMUM PERIODS OF MEDICAL AID, BY STATES

No Limit (15)		6 Months (2)	90 Days (5)	12 Weeks (1)	60 Days (5)	8 Weeks (1)	50 Days (1)	30 Days (6)	4 Weeks (2)	2 Weeks (3)	10 Days (1)	Not Specified (1)
California Connecticut Idaho Illinois Louisiana Maryland Nebraska Wyoming	New Jersey New York North Dakota Ohio Oregon Utah West Virginia	Montana Nevada ¹	Arizona ² Kentucky ² Michigan Minnesota ² Wisconsin ²	South Dakota	Alabama Colorado Missouri ² Oklahoma ² Virginia	Rhode Island	Kansas	Delaware ² Georgia Indiana ² Maine ² Pennsylvania Tennessee	Iowa Texas ²	Massachusetts ² New Hampshire Vermont	New Mexico	Washington ²

¹ Commission may extend the period to 18 months.

² Board, Commission or Department may require additional medical services for further period.

³ Board may extend period 30 days.

⁴ Hospital services subject to extension 2 additional weeks.

⁵ In case of temporary disability not beyond period of compensation payments; in case of permanent disability not beyond date of award. Period may be extended when necessary for complete recovery.

⁶ Commission may extend the period to 1 year.

TABLE 79: MAXIMUM AMOUNTS PAYABLE FOR MEDICAL AID, BY STATES

No Limit (12)	\$800 (1)	\$500 (3)	\$300 (1)	\$250 (3)	\$200 (2)	\$150 (4)	\$100 (10)
Arizona ¹	Nebraska	West Virginia ⁴	Maryland ¹	Wyoming ⁴	Louisiana	Colorado ^{1,9}	Alabama
California ²	Nevada ¹		Montana		Missouri	Ohio ⁷	Delaware
Connecticut	New Hampshire		Utah		Oregon ^{7,8}		Georgia
Idaho	New York					Kansas	Iowa ¹⁰
Illinois ⁴	North Dakota					New Mexico	Kentucky ¹²
Indiana	Oklahoma					Rhode Island ¹⁰	Maine ⁷
Massachusetts ²	Texas					South Dakota	New Jersey ^{7,12}
Michigan	Virginia						Pennsylvania ^{1,4}
Minnesota ¹	Washington ⁸						Tennessee ¹
	Wisconsin ^{1,4}						Vermont

346

¹ Crutches, apparatus, artificial members included.

² Artificial members, crutches and other apparatus to be provided.

³ Artificial eyes, limbs or apparatus are provided.

⁴ Christian Science treatment at option of employee.

⁵ Commissioner may authorize additional \$600 in permanent disability cases.

⁶ Includes \$150 for hospital expenses.

⁷ Commission or Bureau may increase amount.

⁸ Includes \$100 for hospital accommodations; \$100 for surgical and medical service and \$50 for transportation and medicine.

⁹ Dental treatment in addition; maximum \$100.

¹⁰ If hospital treatment extends beyond 14 days, but \$100 where no hospital treatment is given or where hospital treatment is required for not more than 14 days.

¹¹ Commissioner may order additional treatment, maximum \$100.

¹² Additional \$100 where necessary; in case of operation for hernia \$100 additional.

¹³ Includes \$50 for physician's or surgeon's services and in addition \$50 for hospital treatment and appliances.

¹⁴ Exclusive of hospital treatment; amount not limited during the 30 days.

TABLE 80: INCLUSION AND EXCLUSION OF OCCUPATIONAL DISEASES, BY STATES

Specifically by Law	Excluded		Included, Completely or Partially		
	By Word Accident	By Courts' or Commissions' Interpretations	By Word Injury	By Courts' or Commissions' Interpretations	States Enumerating Diseases
Alabama					
Arizona			California		
	Colorado		Connecticut		
Delaware					
Georgia					
Idaho					Illinois ²
Indiana					
Iowa					
	Kansas				Kentucky ⁴
Louisiana					
	Maine			Maryland	
		Michigan		Massachusetts	
Missouri ¹					Minnesota
Montana					
Nebraska					
	Nevada				
	New Hampshire				New Jersey
	New Mexico				New York
				North Dakota ³	Ohio
	Oklahoma				
	Oregon				
	Pennsylvania				
	Rhode Island				
South Dakota					
Tennessee		Texas			
Utah					
Vermont					
Virginia					
Washington			Wisconsin		
Wyoming					

West Virginia makes no provision

¹ Employees entitled to rights under state laws pertaining to occupational disease.

² Bureau allows cases as they come up.

³ Only occupations from which disease may arise enumerated.

⁴ Diseases excluded except those due to inhalation of mine gas or smoke or to inhalation of any kind of gas.

NOTE: The analytical headings, with some additions are based on C. Hookstadt, Bulletin of U. S. Bureau of Labor Statistics, No. 275, p. 49.

TABLE 81: TYPES OF OCCUPATIONAL DISEASES COVERED,
BY STATES—(Continued)

Description of Disease	MINNESOTA	Description of Process
1. Anthrax.		Handling of wool, hair, bristles, hides or skins.
2. Lead poisoning or its sequelæ.		Any process involving the use of lead or its preparations or compounds.
3. Mercury poisoning or its sequelæ.		Any process involving the use of mercury or its preparations or compounds.
4. Phosphorus poisoning or its sequelæ.		Any process involving the use of phosphorus or its preparations or compounds.
5. Arsenic poisoning or its sequelæ.		Any process involving the use of arsenic or its preparations or compounds.
6. Poisoning by wood alcohol.		Any process involving the use of wood alcohol or any preparation containing wood alcohol.
7. Poisoning by nitro- and amido-derivatives of benzene (dinitro-benzol, anilin, and others), or its sequelæ.		Any process involving the use of a nitro- or amido-derivative of benzene or its preparations or compounds.
8. Poisoning by carbon bisulphide or its sequelæ.		Any process involving the use of carbon bisulphide or its preparations or compounds.
9. Poisoning by nitrous fumes or its sequelæ.		Any process in which nitrous fumes are evolved.
10. Poisoning by nickel carbonyl or its sequelæ.		Any process in which nickel carbonyl gas is evolved.
11. Dope poisoning (poisoning by tetrachlormethane or any substance used as or in conjunction with a solvent for acetate of cellulose) or its sequelæ.		Any process involving the use of any substance used as or in conjunction with a solvent for acetate of cellulose.
12. Poisoning by gonioma kamassi (African boxwood) or its sequelæ.		Any process in the manufacture of articles from gonioma kamassi (African boxwood).
13. Chrome ulceration or its sequelæ.		Any process involving the use of chromic acid or bichromate of ammonium, potassium or sodium or their preparations.
14. Epitheliomatous cancer or ulceration of the skin or of the corneal surface of the eye, due to tar, pitch, bitumen mineral oil or paraffin, or any compound, product or residue of any of these substances.		Handling or use of tar, pitch, bitumen, mineral oil or paraffin or any compound, product or residue of any of these substances.
15. Giandera.		Care or handling of any equine animal or the carcass of any such animal.
16. Compressed air illness or its sequelæ.		Any process carried on in compressed air.
17. Ankylostomiasis.		Mining.
18. Miners' nystagmus.		Mining.
19. Subcutaneous cellulitis of the hand (beat hand).		Mining.
20. Subcutaneous cellulitis over the patella (miner's beat knee).		Mining.
21. Acute bursitis over the elbow (miner's beat elbow).		Mining.
22. Inflammation of the synovial lining of the wrist-joint and tendon sheaths.		Mining.
23. Cataract in glassworkers.		Processes in the manufacture of glass involving exposure to the glare of molten glass.

NOTE: From Minnesota, Workmen's Compensation Law, Section 4327 (9).

TABLE 82: DEATH CASES, MAXIMUM WEEKLY PAYMENTS, BY STATES

No Limit	\$20.83	\$20.00	\$19.00	\$18.75	\$18.00	\$17.00	\$16.00	\$15.00	\$14.00	\$13.20	\$12.75	\$12.00	States Not Using Weekly Basis
4 Arizona South Dakota Vermont Wisconsin	1 California	5 Louisiana Minnesota Missouri North Dakota ¹ Texas	1 Illinois ¹	1 Ohio	5 Connecticut Delaware ¹ Maine Maryland New Mexico	1 New Jersey	2 Massachusetts ² Utah	4 Alabama ¹ Iowa Montana Nebraska	2 Michigan Rhode Island ³	1 Indiana	1 Georgia	6 Colorado Idaho Kentucky Pennsylvania ¹ Tennessee ⁴ Virginia Wyoming ¹⁴	8 Kansas ⁷ Nevada ⁸ New Hampshire ⁹ New York ¹⁰ Oregon ¹¹ Washington ¹² West Virginia ¹³ Wyoming ¹⁴

¹ Amounts for these states have been calculated from the basic wage.

² Varies from \$14.00 to \$19.00, according to number of children.

³ Varies from \$10.00 to \$16.00 to widow depending on number of children; \$10.00 maximum for other total dependents.

⁴ Varies from \$12.00 to \$15.00, according to number of children.

⁵ Varies from \$10.00 to \$14.00, according to number of children.

⁶ Varies from \$12.00 to \$15.00, according to a conflicting section.

⁷ Lump sum equal to three times annual earnings, maximum \$3,800.

⁸ \$80.00 per month, calculated from basic wage.

⁹ Lump sum, 150 times average weekly earnings, maximum \$3,000.

¹⁰ \$100 per month, calculated from basic wage.

¹¹ \$15.00 monthly for one orphan, and up.

¹² \$20.00 monthly for parents of unmarried minor; \$250 in lump sum to widow immediately.

¹³ \$10.00 monthly for one orphan, and up.

¹⁴ Lump sum to widow or invalid widower \$2,000; yearly payments for children with aggregate payment \$3,600.

NOTE.—Law does not apply to fatal cases in Oklahoma.

TABLE 84: DEATH CASES, MAXIMUM AGGREGATE PAYMENTS, BY STATES, FOR CHIEF BENEFICIARIES

No Limits	\$7,500	\$6,500	\$5,600	\$5,000	\$4,500	\$4,350	\$4,000	\$3,800	\$3,750	\$3,500	\$3,000	Not Specified ¹
7 Arizona Nevada New York North Dakota Oregon Wash- ington West Virginia	1 Minne- sota	1 Ohio	1 Wyo- ming ²	5 Ala- bama Califor- nia ² Indiana Mary- land Utah	1 Virginia	1 Illinois ⁴	3 Ken- tucky ⁴ Maine Massa- chu- setts ⁴	1 Kansas	1 Colo- rado	1 Ver- mont	2 New Hamp- shire South Dakota	17 Connecticut Delaware Georgia Idaho Iowa Louisiana Michigan Missouri Montana Nebraska New Jersey New Mexico Pennsylvania Rhode Island Tennessee Texas Wisconsin ⁷

¹ Maximum payments limited by weekly maximum and maximum number of weeks.

² Lump sum of \$2,000 to widow or invalid widower, additional sum of \$120 a year to each child, not to exceed in aggregate \$3,600.

³ Three times average annual earnings. Amount includes disability indemnity due or accrued if any.

⁴ Four times average annual earnings. Varies from \$3,750 to \$4,350.

⁵ Includes payments for disability.

⁶ For total dependents other than widow, children or orphans.

⁷ Four times average annual earnings in addition to payments made prior to death, but not to exceed maximum amount payable for permanent total disability.

TABLE 85: DEATH CASES, MAXIMUM DURATION OF PAYMENTS, BY STATES, FOR CHIEF BENEFICIARIES

Until Death of Remarriage ¹	416 Weeks	400 Weeks	360 Weeks	350 Weeks	335 Weeks	312 Weeks	300 Weeks	285 Weeks	260 Weeks	Not Specified ¹⁷	Lump Sums
8 Arizona ² Minnesota ³ Nevada ⁴ New York ⁵ North Dakota ⁶ Oregon ⁶ Washington ⁷ West Virginia ⁸	3 Illinois ⁹ Maryland ^{9, 10} Ohio ⁹	4 Idaho ⁹ Massachusetts ^{9, 10} Montana ⁹ Tennessee ⁹	1 Texas ⁹	1 Nebraska	1 Kentucky ⁹	3 Colorado ^{9, 11} Connecticut ⁹ Utah ^{9, 12}	13 Alabama ⁹ Georgia ¹² Indiana ⁹ Iowa ¹³ Louisiana ¹² Maine ⁹ Michigan ⁹ Missouri ⁹ New Jersey ¹⁴ New Mexico ⁹ Pennsylvania ^{9, 15} Rhode Island ¹² Virginia ¹²	1 Delaware ^{9, 15}	1 Vermont ⁹	3 California ⁹ South Dakota ⁹ Wisconsin ⁹	3 Kansas ⁹ New Hampshire ⁹ Wyoming ⁹

1857

¹ In cases of widow or dependent widower.
² To widow upon remarriage, two years' compensation in a lump sum.
³ Not beyond period required to pay maximum amount. To widow without children on remarriage, two years' compensation as a maximum.
⁴ To widow without children upon remarriage, two years' compensation in a lump sum.
⁵ To widow upon remarriage, 156 weeks' compensation in a lump sum.
⁶ To widow upon remarriage, \$300 in a lump sum.
⁷ To widow upon remarriage, \$240.
⁸ To widow or widower upon remarriage. If within two years after death, a dowry of 20% of amount due between date of remarriage and end of ten years from death of employee.
⁹ Includes period of disability payment, if any.
¹⁰ For other total beneficiaries than widow, children and orphans, 500 weeks.

¹¹ To widow without children upon remarriage, one-half compensation remaining payable in lump sum.
¹² To widow if sole dependent upon remarriage, one-third of remaining compensation payable in lump sum.
¹³ Where disability payments have been made before death, compensation to dependents begins on date of last of such payments but shall not continue more than 300 weeks from the date of injury.
¹⁴ Where disability payments have been made before death maximum total period for disability and death payments is 500 weeks.
¹⁵ Except in case of children, brothers and sisters, to widow upon remarriage, lump sum equal to one-third of the compensation due, maximum 100 weeks.
¹⁶ Except in case of orphan or abandoned child.
¹⁷ Period limited by aggregate maximum payment.
¹⁸ To widow without children upon remarriage, compensation one year, if due.

TABLE 86: DEATH CASES, MAXIMUM PAYABLE TO SPECIFIC STATE FUNDS IN THE ABSENCE OF DEPENDENTS

Percentage Basis	\$1,000.00	\$850.00	\$300.00	\$200.00	\$100.00
Utah ¹	Idaho New York Wisconsin ²	Arizona	Illinois	Minnesota	Massachusetts

¹ 20% of amount that would have been paid if there were no total dependents.

² Where there are no total dependents such amount as, when added to payments to partial dependents, shall equal four times the average annual earnings, maximum \$1,000.00.

TABLE 87: DEATH CASES, MAXIMUM PAYMENTS FOR BURIAL EXPENSES

\$200.00	\$150.00	\$125.00	\$100.00	\$75.00	
6	20	2	12	2	
Idaho Maine ¹ Michigan ¹ New York Rhode Island ¹ Wisconsin	Arizona California Illinois ² Iowa Kansas ² Massachusetts ² Minnesota ² Missouri Montana Nebraska	Nevada New Jersey North Dakota Ohio South Dakota ² Utah Virginia ² Washington ² West Virginia Wyoming	Colorado Maryland	Alabama ¹ Connecticut Delaware ¹ Georgia ¹ Indiana Louisiana ² New Hampshire ¹ Oregon Pennsylvania Tennessee Texas ² Vermont	Kentucky New Mexico ¹

¹ Includes expenses of last sickness.

² In cases of no dependents, only.

³ Except where other insurer or benefit association is liable.

⁴ In cases of dependents, \$100.00.

⁵ In cases of widows or orphan children; in other cases \$100.00.

⁶ Reasonable contingent expenses in addition, \$50.00.

TABLE 88: PERMANENT TOTAL DISABILITY, MAXIMUM WEEKLY PAYMENTS, BY STATES

No Limit	\$21.00	\$20.85	\$20.00	\$19.00	\$18.75	\$18.20	\$18.00	\$17.00	\$16.00	\$15.00	\$14.00	\$13.20	\$12.00	States Not Using Weekly Basis for Payments
1 Arizona	1 C o n - n e c t - c u t	1 C a l i f o r - n i a	6 L o u i s i - a n a ¹ M i n n e - s o t a ¹ M i s s o u r i ¹ N e w Y o r k ¹ N o r t h D a - k o t a T e x a s	1 I l l i - n o i s ¹	1 O h i o	1 W i s c o n - s i n ¹	3 ¹ M a i n e M a r y - l a n d O k l a - h o m a	1 N e w J e r s e y ¹	5 I d a h o ² M a s s - a c h u - s e t t s R h o d e I s l a n d U t a h W e s t V i r - g i n i a	11 A l a b a m a ³ D e l a w a r e G e o r g i a I o w a K a n s a s K e n - t u c k y M o n t a n a N e b r a s k a N e w H a m p - s h i r e S o u t h D a k o t a V e r m o n t	1 M i c h i - g a n	1 I n d i a n a	5 C o l o r a d o N e w M e x i c o P e n n - s y l v a n i a T e n n e s - s e e ⁴ V i r g i n i a	4 N e v a d a ⁵ O r e g o n ⁶ W a s h - i n g - t o n ⁷ W y o - m i n g ⁸

¹ Employees undergoing vocational rehabilitation entitled to additional weekly payments.

² Varies from \$14.00 to \$19.00, according to number of children.

³ Varies from \$12.00 to \$16.00, according to marital condition.

⁴ Varies from \$12.00 to \$15.00, according to number of children.

⁵ \$60.00 monthly maximum; \$30.00 per month extra if employee needs constant attendant.

⁶ \$30.00 monthly for an unmarried person, and up.

⁷ \$20.00 monthly for a woman with a husband not an invalid, and up. If services of constant attendant are required compensation increased \$25.00 per month.

⁸ \$4,000 in a lump sum plus \$120 per year for each son under 16 and each daughter under 18; maximum aggregate additional sum for children \$4,000.

⁹ Varies from \$12.00 to \$15.00, according to a conflicting section.

TABLE 89: PERMANENT TOTAL DISABILITY, MAXIMUM PERCENTAGE OF WEEKLY WAGES, BY STATES

No Limit	66½%	65%	60%	55%	50%	States Not Using Weekly Percentage Basis
Idaho ¹	12 Maine Maryland Massachusetts Minnesota Missouri Nebraska New Jersey New York North Dakota Ohio Oklahoma West Virginia	6 Arizona California ² Illinois ³ Kentucky Louisiana Wisconsin	7 Alabama ⁴ Iowa Kansas Michigan Pennsylvania Texas Utah ⁵	2 Indiana South Dakota	11 Colorado Connecticut Delaware Georgia Montana New Hampshire New Mexico Rhode Island Tennessee Vermont Virginia	4 Nevada ⁶ Oregon Washington Wyoming

¹ From 55% up; if employee has wife, 60%, plus 5% for each minor child; limit on weekly maximum \$16.00.

² After 240 weeks rate reduced to 40%.

³ Varies from 50% to 65%, according to number of children.

⁴ Varies from 50% to 60%, according to number of children.

⁵ After first 5 years rate reduced to 45%.

⁶ 60% of monthly wage.

TABLE 90: PERMANENT TOTAL DISABILITY, MAXIMUM AGGREGATE PAYMENTS, BY STATES

No Limit		\$10,000	\$8,000	\$7,000	\$6,000	\$5,000	\$4,500	\$4,000	\$3,000	Not Specified ¹
Arizona	15									
California	Nevada	1	1	1	2	7	1	3	1	11
Colorado	New York	Minnesota	Wyoming ²	Michigan	Kentucky ⁴	Alabama	Virginia	Delaware	South Da-	Connecticut
Idaho	North Dakota				Maine	Georgia		Massachu-	kota ⁶	Iowa
Illinois ⁵	Ohio					Indiana		setts ⁶		Kansas
Missouri	Oregon					Maryland		Vermont		Louisiana
Nebraska	Utah					Pennsylvania				Montana
West Virginia	Washington					Rhode Island				New Hamp-
						Tennessee				shire
										New Jersey
										New Mexico
										Oklahoma
										Texas
										Wisconsin ⁷

358

¹ Maximum payments limited by weekly maximum and maximum number of weeks.

² After amount paid equals full death benefit, \$3,750-\$4,350, life pension equal to 8% of full death benefit, annually.

³ Lump sum \$4,000, plus \$4,000 maximum for children.

⁴ Amount for partial disability deducted if immediately preceding total disability.

⁵ Exclusive of specific amount payable for dismemberment or loss of use.

⁶ Or amount of death benefit payable to widow or child.

⁷ Maximum varies according to age of injured employee.

TABLE 91: PERMANENT TOTAL DISABILITY, MAXIMUM DURATION OF PAYMENTS, BY STATES

No Limit	1000 Weeks	550 Weeks	520 Weeks	500 Weeks	475 Weeks	8 Years	400 Weeks	350 Weeks	300 Weeks	260 Weeks	Not Specified ¹¹	Lump Sum	
Arizona California ¹ Colorado Idaho ² Illinois ³ Missouri ⁴ Nebraska ⁵ West Virginia	15 Nevada New York North Dakota Ohio ⁶ Oregon Utah Washington	1 Wisconsin ⁷	2 Ala- bama ⁸ Tenna- see ⁹	2 Con- necti- cut New Mexico	9 Indi- ana Maine Massa- chu- setts Michi- gan Mon- tana ¹⁰ Okla- homa Pennsyl- vania ¹⁰ Rhode Island Virginia	1 Dela- ware	2 Kansas Ken- tucky ¹⁰	4 Iowa Louis- iana New Jersey Texas	1 Georgia	1 New Hamp- shire	1 Ver- mont ¹⁰	3 Mary- land Minne- sota South Dakota	1 Wyo- ming

359

¹ After 240 weeks, rate reduced to 40%.
² After 400 weeks, \$6.00 per week.
³ After amount paid equals full death benefit, \$3,750-\$4,350, a pension for life of 8% of total previous payments.
⁴ After 300 weeks, 25% of average annual earnings for life.
⁵ After 300 weeks, 45% of wages for life, maximum \$12.00 weekly.
⁶ After 5 years, 45% of wages for life.
⁷ Varies from 280 to 1,000 weeks depending on age of injured employee.
⁸ After 400 weeks, \$5.00 per week for 150 weeks in certain cases.
⁹ From date of injury.
¹⁰ Period for partial disability deducted if immediately preceding total disability.
¹¹ Period limited by aggregate maximum payment and weekly maximum.

TABLE 92: PERMANENT PARTIAL DISABILITY, MAXIMUM WEEKLY PAYMENTS, BY STATES, CASES OTHER THAN DISMEMBERMENT OR LOSS OF USE

No Limit	\$21.00	\$20.83	\$20.00	\$19.00	\$18.75	\$18.20	\$18.00	\$17.00	\$16.00	\$15.00	\$14.00	\$12.00	\$10.00	\$7.50	Payments in Proportion to Degree of Disability	States Not Using Weekly Basis for Payments
1 Arizona	1 Connecticut	1 California	6 Louisiana Minnesota Missouri New York North Dakota Texas	1 Illinois ²	1 Ohio	1 Wisconsin ¹	3 Maine Maryland Oklahoma	1 New Jersey	4 Idaho ³ Massachusetts Utah West Virginia	5 Alabama ⁴ Delaware Nebraska New Hampshire South Dakota	1 Michigan	6 Colorado Georgia Kansas Pennsylvania Tennessee Virginia	2 Rhode Island Vermont	1 Montana	4 Indiana Iowa Kentucky New Mexico	4 Nevada ⁵ Oregon ⁶ Washington ⁷ Wyoming ⁸

¹ Employees undergoing vocational rehabilitation entitled to receive additional weekly payments.

² Varies from \$14.00 to \$19.00, according to number of children.

³ Varies from \$12.00 to \$16.00, according to marital condition.

⁴ Varies from \$12.00 to \$15.00, according to number of children.

⁵ Percentage of partial disability to total disability determined;

50% of wages, maximum \$60.00 per month for one month represents 1% of disability.

⁶ \$25.00 monthly for certain periods in addition to temporary total or temporary partial payments.

⁷ Sums proportionate to degree of disability, maximum \$24.00.

⁸ Sums proportionate to degree of disability, varying from \$150 to \$1,000.

TABLE 93: PERMANENT PARTIAL DISABILITY, MAXIMUM PERCENTAGE OF WEEKLY WAGE, BY STATES, CASES OTHER THAN DISMEMBERMENT OR LOSS OF USE

No Limit	66½%	65%	60%	55%	50%	Percentage in Proportion to Degree of Disability	States Not Using Weekly Percentage Basis
Idaho ¹	11 Maine Massachusetts Minnesota Missouri Nebraska New Jersey ² New York North Dakota ³ Ohio Oklahoma West Virginia ⁴	3 California ⁵ Illinois ⁶ Louisiana	6 Alabama ⁷ Kansas Michigan Pennsylvania Texas Utah	1 Arizona	11 Connecticut Delaware Georgia Maryland Montana New Hampshire Rhode Island South Dakota Tennessee Vermont Virginia	6 Colorado Indiana Iowa Kentucky New Mexico Wisconsin ⁸	4 Nevada ⁹ Oregon Washington Wyoming

¹ From 55% up; if employee has wife, 60% plus 5% for each minor child; limit on weekly maximum, \$16.00.

² Percentage of wages not of wage loss.

³ Compensation depending on percentage of disability to be computed in accordance with fixed schedule.

⁴ Disabilities 70% for period; thereafter 1% of wages for each 1% of disability in excess of 60%.

⁵ Varies from 50% to 65%, according to number of children.

⁶ Varies from 50% to 60%, according to number of children.

⁷ Such proportion of weekly compensation for total disability as actual wage loss bears to average weekly wage at time of injury.

⁸ Percentage of partial disability to total disability is determined; monthly payments of 50% of wages represents 1% of disability.

⁹ Commission may grant payments, in addition to compensation, for maintenance during rehabilitation; maximum weekly amount \$10.00; maximum period 20 weeks.

TABLE 94: PERMANENT PARTIAL DISABILITY, MAXIMUM AGGREGATE PAYMENTS, BY STATES, CASES OTHER THAN DISMEMBERMENT OR LOSS OF USE

No Limits	\$5,000	\$4,500	\$4,350	\$4,000	\$3,750	\$3,120	\$3,000	\$2,400	\$1,500	Not Specified ¹	
5	3	1	1	2	1	1	1	1	1	26	
Arizona California Nevada New York West Virginia	Alabama Indiana Utah	Virginia	Illinois ²	Kentucky ³ Massachusetts ⁴	Ohio ⁵	Colorado ⁶	Maryland	Washington	Wyoming	Connecticut Delaware Georgia Idaho Iowa Kansas Louisiana Maine Michigan Minnesota Missouri Montana Nebraska	New Hampshire New Jersey New Mexico North Dakota ⁶ Oklahoma Oregon Pennsylvania Rhode Island South Dakota ⁶ Tennessee Texas Vermont Wisconsin ⁷

¹ Maximum payments limited by weekly maximum and maximum number of weeks.

² Varies from \$3,750 to \$4,350 or full death benefit.

³ Amount for total disability deducted if immediately preceding partial disability.

⁴ Exclusive of specific amount payable for dismemberment or loss of use.

⁵ In addition to compensation for temporary total disability, if any.

⁶ In lieu of other compensation.

⁷ Proportionate to indemnity for permanent total disability as the nature of the injury bears to one causing permanent total disability.

TABLE 95: PERMANENT PARTIAL DISABILITY, MAXIMUM PERIODS FOR DURATION OF PAYMENTS, BY STATES, CASES OTHER THAN DISMEMBERMENT OR LOSS OF USE

No Limits	520 Weeks	500 Weeks	468 Weeks	416 Weeks	400 Weeks	335 Weeks	312 Weeks	300 Weeks	285 Weeks	260 Weeks	150 Weeks	Not Specified	Lump Sum
4	1	3	1	3	1	1	2	13	1	1	3	7	2
Arizona California ¹ New York West Virginia ²	Connecticut	Indiana Michigan New Jersey	North Dakota ³	Illinois Kansas Oregon ⁴	Missouri	Kentucky	South Dakota Utah ⁵	Alabama Georgia Louisiana Maine Minnesota Nebraska New Hampshire Oklahoma Pennsylvania ⁶ Rhode Island Tennessee Texas ⁷ Virginia	Delaware	Vermont ⁸	Idaho Montana New Mexico	Colorado ⁹ Iowa ⁹ Maryland ⁹ Massachusetts ⁹ Nevada Ohio ⁹ Wisconsin ⁹	Washington Wyoming

¹ Disabilities of 70% or over, 65% of wages for 240 weeks and thereafter a life pension of 1% of wages for each 1% of disability in excess of 60%. Account taken of nature of physical impairment, occupation and age of employee.

² Disability over 85%, 66⅔% of weekly wages for life.

³ Age and occupation taken into account in determining percentage of disability. In lieu of other compensation.

⁴ Computed from 96 months.

⁵ Period for temporary total disability deducted if immediately preceding permanent partial disability.

⁶ Period of compensation for total and partial disabilities not to exceed 400 weeks.

⁷ Period limited by aggregate maximum payment and weekly maximum.

⁸ Disability period is estimated as percentage of permanent total.

⁹ Payments to be such proportion of indemnity for permanent total as nature of injury bears to one causing permanent total. Period varies from 280 to 1,000 weeks according to age of employee.

TABLE 96: TEMPORARY TOTAL DISABILITY, MAXIMUM WEEKLY PAYMENTS, BY STATES

No Limit	\$21.00	\$20.83	\$20.00	\$19.00	\$18.75	\$18.20	\$18.00	\$17.00	\$16.00	\$15.00	\$14.00	\$13.20	\$12.00	States Not Using Weekly Basis for Payments
1 Arizona ¹	1 Connecticut	1 California	6 Louisiana Minnesota Missouri New York North Dakota Texas	1 Illinois ²	1 Ohio	1 Wisconsin	3 Maine Maryland Oklahoma	1 New Jersey	5 Idaho ³ Massachusetts Rhode Island Utah West Virginia	11 Alabama ⁴ Delaware Georgia Iowa Kansas Kentucky Montana Nebraska New Hampshire South Dakota Vermont	1 Michigan	1 Indiana	5 Colorado New Mexico Pennsylvania Tennessee Virginia	4 Nevada ⁵ Oregon ⁶ Washington ⁷ Wyoming ⁸

¹ Additional allowance of \$10.00 per month for total dependents.

² Varies from \$14.00 to \$19.00, according to number of children.

³ Varies from \$12.00 to \$16.00, according to marital condition.

⁴ Varies from \$12.00 to \$15.00, according to number of children.

⁵ \$72.00 per month, maximum; \$10.00 per month additional is

allowed in all cases if there are total dependents residing in the United States.

⁶ \$97.00 per month, maximum.

⁷ Varies from \$22.50 up, for a wife with a husband not an invalid.

⁸ Varies from \$50.00 to \$90.00 per month, according to marital condition.

TABLE 97: TEMPORARY TOTAL DISABILITY, MAXIMUM PERCENTAGE OF WEEKLY WAGES, BY STATES

No Limit	66 $\frac{2}{3}$ %	65%	60%	55%	50%	States Not Using Weekly Percentage Basis
1 Idaho ¹	12 Maine Maryland Massachusetts Minnesota Missouri Nebraska New Jersey New York North Dakota Ohio Oklahoma West Virginia	6 Arizona California Illinois ² Kentucky Louisiana Wisconsin	7 Alabama ³ Iowa Kansas Michigan Pennsylvania Texas Utah	2 Indiana South Dakota	11 Colorado Connecticut Delaware Georgia Montana New Hampshire New Mexico Rhode Island Tennessee Vermont Virginia	4 Nevada ⁴ Oregon ⁵ Washington Wyoming

¹ From 55% up, 60% if employee has wife, plus 5% for each minor child; limit on weekly maximum, \$16.00.

² Varies from 50% to 65%, according to number of children.

³ Varies from 50% to 60%, according to number of children.

⁴ 60% of monthly wage.

⁵ Varies from 40% to 66 $\frac{2}{3}$ % of monthly wage.

TABLE 98: TEMPORARY TOTAL DISABILITY, MAXIMUM AGGREGATE PAYMENTS, BY STATES

No Limits	\$8,000	\$7,200	\$7,000	\$6,000	\$5,000	\$4,500	\$4,350	\$4,000	\$3,750	\$3,500	Not Specified ¹
5 Colorado Idaho North Dakota Oregon Washing- ton	1 Wyo- ming ²	1 Nevada	1 Michi- gan	2 K e n - tucky ³ Maine	7 Alabama Califor- nia ⁴ Georgia Indiana Pennsyl- vania R h o d e Island Utah	1 Virginia	1 Illinois ⁵	1 M a s s a - chusetts	2 Mary- land Ohio	1 New York	20 Arizona New Hamp- shire Connecticut New Jersey Delaware New Mexico Iowa Oklahoma Oklahoma South Dakota Louisiana Tennessee Minnesota Texas Montana Vermont Missouri West Virginia Nebraska Wisconsin ⁶

¹ Maximum payments limited by weekly maximum and maximum number of weeks.

² Equal to amount payable for permanent disability under like circumstances.

³ Compensation for partial disability deducted if immediately preceding total disability.

⁴ Three times average annual earnings.

⁵ Varies from \$3,750 to \$4,350.

⁶ Four times average annual earnings.

TABLE 99: TEMPORARY TOTAL DISABILITY, MAXIMUM DURATION OF PAYMENTS, BY STATES

No Limits	520 Weeks	500 Weeks	475 Weeks	100 Months	416 Weeks	400 Weeks	350 Weeks	312 Weeks	300 Weeks	260 Weeks	240 Weeks	78 Weeks	Not Specified
5 Colorado Idaho ¹ North Dakota Oregon Washington	2 Connecticut New Mexico	7 Indiana Maine Massachusetts Michigan Pennsylvania ² Rhode Island Virginia	1 Delaware	2 Arizona Nevada	3 Illinois Kansas Kentucky ³	2 Missouri Texas	1 Georgia	4 Maryland Ohio South Dakota Utah	10 Alabama Iowa Louisiana Minnesota Montana Nebraska ⁴ New Hampshire New Jersey Oklahoma Tennessee	1 Vermont	1 California	1 West Virginia	3 New York ⁴ Wisconsin ⁴ Wyoming ⁴

¹ After 400 weeks, \$6.00 per week during continuance.

² Period for partial disability deducted if immediately preceding total disability.

³ From the date of injury.

⁴ Period limited by aggregate maximum payment and weekly maximum.

⁵ Period limited by monthly maximum and total amount for permanent disability.

TABLE 100: ADMINISTRATION OF COMPENSATION LAWS, BY STATES

State	Administered by	How Claims Are Settled		
		Undisputed Cases	Disputed Cases	Cases Which May Be Reviewed
Alabama.....	Courts. Supervised in some respects by Superintendent of Insurance.	By agreement.	Either party may submit controversy to circuit courts for hearing and decision in a summary manner; if wilful misconduct is pleaded, either party may demand a jury trial.	
Arizona.....	Industrial Commission.	By rules and regulations adopted and published by commission.		
California.....	Industrial Accident Commission for the Division of Workmen's Compensation Insurance and Safety of the Department of Labor and Industrial Relations.	By agreement, subject to approval of commission.	By commission upon application in person or by attorney or representative.	Referee's findings subject to review by commission. Within 20 days after final decision of commission, either party may apply for rehearing upon certain ground.
Colorado.....	Industrial Commission.	By agreement and reported to commission.	By commission or referee upon motion of commission or of any party in interest.	Any party dissatisfied may petition for review by referee.
Connecticut....	Five district compensation commissioners.	By written agreement, approved by commissioner, not before end of waiting period.	By a hearing and award by the commissioner.	Those involving a doubtful question of the law by a superior court.
Delaware.....	Industrial Accident Board.	By agreement, subject to approval of Board.	By board after hearing.	
Georgia.....	Industrial Commissioner.	By agreement, after 14 days from injury, or any time in case of death, subject to approval of commission.	By commission or a member upon application.	Award by member of commission subject to review by full commission upon application within 7 days from notice of award.
Idaho.....	Industrial Accident Board.	By agreement, subject to approval of Board.	Upon Board's own motion or of any party; case heard by member of Board.	Upon application of either party, within 30 days after decision, decision reviewed by Board.

Illinois.....	Industrial Commission.	By agreement, not before 7 days after injury.	By arbitrator, or in case of permanent disability or death, an arbitration committee.	Decisions subject to review by commission upon petition within 15 days after notice.
Indiana.....	Industrial Board.	By agreement, subject to approval by Board after 7 days from injury.	By Board upon application of either party.	Upon application subject to review by full Board.
Iowa.....	Industrial Commissioner.	By agreement, subject to approval of commissioner not before 12 days after injury.	By arbitration board.	Decisions of board subject to review by commissioner.
Kansas.....	Courts. Supervised to some extent by Superintendent of Insurance.	By agreement.	By arbitration committee or arbitrator or by action in court without a jury unless demanded.	
Kentucky.....	Workmen's Compensation Board.	By agreement, subject to approval by Board.	By Board or member thereof or authorized referee.	If first hearing not before full Board, application for review within 7 days after award.
Louisiana.....	No provision.	By agreement in writing, subject to approval of court.	Determined by court having jurisdiction, after a formal hearing.	
Maine.....	Industrial Accident Commission.	By agreement, subject to approval of commission.	Upon petition of either party, by Chairman or associate legal member of commission, after hearing.	
Maryland.....	State Industrial Accident Commission.	By commission.	By an arbitration committee appointed by commission.	
Massachusetts..	Department of Industrial Accidents.	By agreement, subject to approval of the department.	Either party may notify department; case heard by member of department.	Member's decision subject to review by Reviewing Board, consisting of five members of department.
Michigan.....	Department of Labor and Industry under a commission of 3 members.	By agreement subject to approval of commission.	By member or deputy member of commission acting as committee of arbitration.	Subject to review by commission.
Minnesota.....	Industrial Commission.	Duty of employers to pay compensation according to terms of act without agreement or order.	Referred, upon petition of either party, to commission for hearing or to be assigned to a commissioner or referee for determination.	Subject to review and appeal to courts.

NOTE: Based on F. Robertson Jones' "Digest of Workmen's Compensation Laws," Ninth Edition.

TABLE 100: ADMINISTRATION OF COMPENSATION LAWS, BY STATES—(Continued)

State	Administered by	How Claims Are Settled		
		Undisputed Cases	Disputed Cases	Cases Which May Be Reviewed
Missouri	Workmen's Compensation Commission.	By agreement, after 7 days from date of injury or death, subject to approval of commission.	By hearing before commission in summary manner upon petition of either party.	Award by any one member subject to review by full commission.
Montana	Industrial Accident Board.	By compromises approved by Board or made by Board.	By the Board, subject to rehearing on certain specified grounds.	
Nebraska	Compensation Commissioner.	By agreement, in accordance with Act.	Submitted to commissioner.	
Nevada	Nevada Industrial Commission.	By reasonable and proper rules adopted by commission.		
New Hampshire.	By courts; supervised partially by Commissioner of Labor.	By agreement or by action in equity, brought in Superior Court.		
370 New Jersey	Workmen's Compensation Bureau of Department of Labor.	By agreement, subject to approval of bureau.	If no agreement within 21 days after injury, claim settled by bureau or member upon petition or on its own motion.	
New Mexico	To some extent by District Court.	By agreement, subject to approval of District Court.	By trial in District Court upon motion of either party.	
New York	Industrial Commissioner, claims settled by Industrial Board of 5 members.	By hearing, upon application of either party, before a referee.	By a hearing by Board.	
North Dakota	Workmen's Compensation Bureau of Department of Agriculture and Labor.	All claims presented to bureau, which has full power.		
Ohio	Industrial Commission.	Commission determines all questions within its jurisdiction.	If claim is rejected on jurisdictional grounds, claimant may within 30 days apply for rehearing by commission.	
Oklahoma	State Industrial Commission.	By agreement, after first 5 days of disability, subject to approval by commission.	By commission or by arbitration committee upon application of either party.	

Oregon.....	State Industrial Accident Commission.	Solely by commission.	Solely by commission.	Rehearing upon application made within 60 days after service of award or decision.
Pennsylvania...	Bureau of Workmen's Compensation of Department of Labor and Industry under supervision of Workmen's Compensation Board.	By written agreement, on or after 10th day from date of accident, subject to approval of Board.	By hearing by Board or a referee except where the amount is in dispute or where the petition is for commutation of future payments.	
Rhode Island...	Commissioner of Labor.	By agreement, subject to approval by commissioner.	Upon petition of either party by Superior Court in summary manner.	
South Dakota...	Industrial Commissioner.	By agreement, subject to approval of commissioner.	By board of arbitration or by commissioner if parties waive right.	Award subject to review by commissioner.
Tennessee.....	Supervised partially by Department of Labor or and by Commissioner of Insurance and Banking.	By agreement, subject to approval of Circuit Court Judge.	By Judge or Chairman of County Court upon petition of either party.	
Texas.....	Industrial Accident Board.	By agreement.	By Board.	
Utah.....	Industrial Commission.	Commission has full power to hear and determine questions.		
Vermont.....	Commissioner of Industries.	By agreement, subject to approval by commissioner.	By commissioner, upon petition of either party for hearing, with award made within 6 months from date of hearing.	
Virginia.....	Industrial Commission.	By agreement, after 10 days from date of injury, or any time after death, subject to approval of commission.	By commission or any member thereof, upon application of either party.	Award by one member subject to review by full commission upon application within 7 days from date thereof.
Washington....	Director of Labor and Industries through Division of Industrial Insurance.	Division of Industrial Insurance determines all questions.		
West Virginia...	State Compensation Commissioner.	Commissioner has full power to determine all questions.		
Wisconsin.....	Industrial Commission.	By agreement or compromise, subject to review by commission within one year.	By commission upon written application of either party.	
Wyoming.....	Courts.	Fixed by Judge of District Court.	By Judge of District Court after a hearing; right of jury trial in certain cases.	

TABLE 101: PROVISIONS FOR COMPUTATION OF PAYMENTS,
BY STATES

	Time Elapsing before Commutation Allowed	Commission or Board to Allow Lump Sum or Sums	Interest Not Specified	Interest Specified
Alabama .....	..	On approval of Court	..	6%
Arizona .....	..	Comm. max. \$6,500	Not specified	..
California .....	..	Commission	..	6% ¹
Colorado	Six months from date of injury	Commission	..	4%
Connecticut .....	..	Commissioner	Discount due	..
Delaware .....	..	Ind. Accident Board	..	5%
Georgia	Not before 26 weeks' compen- sation has been paid	Commission	..	5%
Idaho .....	..	Ind. Accident Board	..	4%
Illinois	Six months in total disabil- ity cases	Board	..	3%
Indiana	After 26 weeks' compensation has been paid	Board	..	3%
Iowa .....	..	District Court	..	5% ²
Kansas	After 6 months' compensation has been paid	Sum equal to 80% amount due ³	..	..
Kentucky	After 6 months' payments	..	..	5%
Louisiana .....	..	Approved by Court	..	8%
Maine	After 6 months' compensation has been paid	Commissioner	..	5%
Maryland .....	..	Commission ⁴	Not specified	..
Massachusetts	After 6 months' weekly pay- ments	..	Not specified	..
Michigan	After 6 months' payments	Board	..	5%
Minnesota .....	..	Court	..	6%
Missouri .....	..	Commission	..	4%
Montana .....	..	Board	..	5%
Nebraska .....	..	Board	..	5%
Nevada .....	..	Comm. max. \$5,000	Not specified	..
New Hampshire .....	..	Court	Not specified	..
New Jersey .....	..	Bureau	..	5%
New Mexico .....	..	Court	Not specified	..
New York .....	..	Commission	..	3 1/2% ²
North Dakota .....	..	Bureau	..	4%
Ohio .....	..	Board	Not specified	..
Oklahoma .....	..	Commission	Not specified	..
Oregon .....	..	Commission	..	4%
Pennsylvania .....	..	Board	..	5%

¹ In cases of death or permanent disability.

² Where period of compensation is definite.

³ Does not apply to fatal cases.

⁴ In all cases except temporary disability.

NOTE: Based on National Bureau of Casualty and Surety Underwriters, "Digest of Workmen's Compensation Laws."

TABLE 101: PROVISIONS FOR COMPUTATION OF PAYMENTS,
BY STATES--(Continued)

	Time Elapsing before Computation Allowed	Commission or Board to Allow Lump Sum or Sums	Interest Not Specified	Interest Specified
Rhode Island....	After 6 months' payment	Court	..	5%
South Dakota...	Six months from injury	Commissioner	..	5%
Tennessee.....	..	Court	..	6%
Texas.....	..	Board ¹	..	Legal rate
Utah.....	..	Commission Board	Not specified	4%
Vermont.....	..	Commission	Not specified	..
Virginia.....	After 6 weeks' payment	Commission	Not specified	..
Washington.....	..	Div. of Ind. Insurance	Not specified	..
West Virginia...	..	Commissioner	Not specified	..
Wisconsin.....	Six months from injury	Commissioner	..	3%
Wyoming.....	..	Courts	Not specified	..

TABLE 102: SPECIAL PROVISIONS FOR HERNIA, BY STATES

Alabama.....	..	Compensated if result of an accident, and if injured, being physically fit, submits to surgical operation.
Arizona.....	..	If result of accident, compensated on basis of temporary total or permanent partial disability. Disability due to aggravation of a pre-existing hernia compensated for a period not to exceed two months.
California.....	None	If disability is due wholly or partially to the employment, the Commission holds the employer responsible accordingly.
Colorado.....	..	Compensated if direct result of accidental strain. Maximum operating fee \$50. No compensation for hernia resulting in strangulation where operation has been refused. In case of operation, medical aid is provided under the general provisions, irrespective of time limit.
Connecticut....	None	
Delaware.....	None	
Georgia.....	..	Compensated if result of accident and if injured submits to operation unless physically unfit.
Idaho.....	..	Compensated.
Illinois.....	..	Compensated if proved to be result of accidental strain.
Indiana.....	None	
Iowa.....	None	
Kansas.....	None	
Kentucky.....	..	If injured undergoes operation, compensation is paid for actual period of disability. If physically fit and refuses operation, compensation allowed for not exceeding one year; if physically unfit, compensation under general provisions.
Louisiana.....	..	Compensated if direct result of accidental strain. If employee refuses to submit to operation, truss or other necessary appliance must be furnished and compensation paid for 26 weeks after accident; if employee submits to operation, medical and surgical expense is payable under general provisions for medical aid, and compensation for disability is payable for a period not to exceed 26 weeks if operation is successful.

NOTE: Based on National Bureau of Casualty and Surety Underwriters, "Digest of Workmen's Compensation Laws."

TABLE 102: SPECIAL PROVISIONS FOR HERNIA, BY STATES
—(Continued)

Maine.....	None	
Maryland.....	None	
Massachusetts...	None	
Michigan.....	None	
Minnesota.....	None	
Montana.....	..	Compensated if direct result of accidental strain. Maximum operating fee, \$50. No compensation for hernia resulting in strangulation where operation has been refused.
Nebraska.....	None	
Nevada.....	..	Commission has ruled that time loss or decrease in earning capacity resulting from hernia due to accident, or the aggravation of a pre-existing hernia may be compensated.
New Hampshire.....	None	
New Jersey.....	..	If result of accident and employee submits to operation, medical aid maximum \$150 and compensation for actual period of disability; if refuses operation, reasonable cost of truss or other appliance and compensation for twenty weeks.
New Mexico.....	..	Maximum operating fee \$75.
New York.....	None	
North Dakota.....	None	
Ohio.....	None	
Oklahoma.....	..	Compensation for eight weeks and cost of operation, but in case hernia results in permanent total, compensation is payable for such disability.
Oregon.....	..	If proven to be the result of injury and employee submits to operation, compensation for temporary total disability is payable for a period of forty-two days. If operation is refused, no benefits are payable.
Pennsylvania.....	None	
Rhode Island.....	None	
South Dakota.....	None	
Tennessee.....	None	
Texas.....	..	If the result of accident, cost of operation and compensation for twenty-six weeks. If the operation is not successful, compensation is payable under general provisions. If employee refuses operation, compensation under general provisions for period not exceeding one year.
Utah.....	None	
Vermont.....	..	50% of wages in lieu of all other benefits except medical. Duration: simple hernia, four weeks; strangulated hernia, eight weeks.
Virginia.....	..	If proved to be result of accident, cost of operation and compensation for temporary total disability. Permanent partial disability is compensated if it follows operation. If employee refuses operation, no compensation is allowed unless he is physically unfit, in which case provisions for partial disability apply.
Washington.....	None	
West Virginia.....	..	Compensation allowed if result of accident and if employee, being physically fit, submits to operation. Death or permanent partial disability resulting from operation considered as due to injury and compensated accordingly.
Wisconsin.....	None	Compensated if caused by work in which employee was engaged.
Wyoming.....	None	

NOTE: Based on National Bureau of Casualty and Surety Underwriters, "Digest of Workmen's Compensation Laws."

TABLE 103: NUMBER OF WEEKS' COMPENSATION ALLOWED FOR LOSS OF OR LOSS OF USE OF EYE, BY STATES, FROM SPECIFIC SCHEDULES

In Lieu of Other Compensation	Number of Weeks
Alabama.....	100
Delaware.....	113
Georgia.....	100
Indiana ¹	150
Iowa.....	100
Kansas.....	110
Kentucky.....	100
Louisiana.....	100
Maine ²	100
Michigan.....	100
Montana.....	100-120 ³
New Mexico.....	100-110 ³
New York ⁴	160
North Dakota.....	130
Oklahoma.....	100
Oregon ⁵	40 months
Pennsylvania.....	125
Tennessee.....	100
Texas.....	100
Virginia.....	100
West Virginia.....	132
Wisconsin.....	280-1,000 ⁶
In Addition to Temporary Total Compensation	
Arizona.....	25-30 months ²
Colorado.....	104-139 ²
Connecticut ¹	104
Idaho.....	100-120 ³
Illinois.....	110
Maryland.....	100
Minnesota ⁴	100
Nebraska.....	125
Nevada.....	25-30 months ²
New Jersey.....	100
Ohio.....	100
South Dakota.....	100
Utah.....	100-120 ³
Vermont.....	100
In Addition to Temporary Total and Permanent Partial Compensation	Number of Weeks
Massachusetts ¹	50
Rhode Island ¹	75
Lump Sums	
Washington.....	\$1,080-\$1,440 ²
Wyoming.....	\$1,500
Based on Percentage of Disability	
California	
No Schedule	
New Hampshire.....	..

¹ Reduction to $\frac{1}{2}$ or less of normal vision equivalent to loss of sight.

² Where two figures are given, the first is for loss of sight, the second for enucleation.

³ If healing period exceeds 20 weeks, additional compensation.

⁴ Lump sum at option of employee.

⁵ Percentage of wages for these periods depends on age of employee.

⁶ If retraining for new occupation is necessary, additional compensation, maximum 25 weeks.