

U.S. DEPARTMENT OF LABOR

EMPLOYMENT STANDARDS ADMINISTRATION

Office of Workmen's Compensation Programs

Washington, D.C. 20211

December 15, 1972

No. 5



TO : INSURANCE CARRIERS AND SELF-INSURED EMPLOYERS UNDER THE
LONGSHOREMEN'S AND HARBOR WORKERS' COMPENSATION ACT, AS
EXTENDED

SUBJECT: Selected provisions of P. L. 92-576, amendments to the
Act regarding assistance to covered employees in
obtaining compensation.

The 1972 Amendments to the Act, as extended, increase the responsibility of the Secretary of Labor for administering the Act and providing services to covered employees.

The Secretary is to insure that each injured employee receives proper medical treatment and that employees receiving compensation are given information and assistance in obtaining rehabilitation and all other services available under the Act.

A newly added subsection requires that the Secretary, on request, shall provide persons covered by the Act with information and assistance relating to coverage and compensation, including legal assistance in processing a claim.

Another amendment changes the provision relating to compromise agreements between injured employees and third parties against whom they may have an action for liability.

These and other increased responsibilities have been delegated to the Office of Workmen's Compensation Programs, which administers the law through deputy commissioners in fourteen district offices. The new provisions are described below.

Medical treatment, rehabilitation, and assistance to claimants
(Sections 7 and 39)

a. Section 7 provides that an injured employee shall be entitled to receive treatment from a physician of his choice authorized by the Secretary. This Office has designated as physicians authorized to render medical care all duly qualified physicians,

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to include surgeons and osteopathic practitioners within the scope of their practice as defined by State law. The responsibility to insure that injured employees receive proper medical care has been delegated to deputy commissioners in district offices of the Office of Workmen's Compensation Programs. The deputy commissioners shall actively supervise medical care, require periodic medical reports, and determine the necessity, character, and sufficiency of any medical aid furnished or to be furnished.

b. The amended Section 39 provides that the Secretary shall explain to employees drawing compensation under the Act medical, manpower, and vocational rehabilitation services which injured employees are entitled to receive and shall help them obtain the best such services available. This activity will be performed primarily by deputy commissioners of this Office.

Legal services and fees (Section 28 and 39)

a. Under Section 28, a deputy commissioner, the newly established Benefits Review Board, or a court having jurisdiction may, within limits, assess legal fees against an employer in cases where the existence or extent of liability is contested and the employee succeeds through the services of an attorney in establishing liability or in getting more compensation.

b. If the employer has refused to pay compensation within 30 days after receiving written notice of a claim for compensation having been filed, and the employee has hired an attorney who successfully prosecuted the case, the employer can be required to pay the attorney's fee. An employer or insurance carrier required to pay an attorney's fee may be further required to pay costs and fees for attendance of witnesses, contingent on approval by the deputy commissioner, the Benefits Review Board, or the court. Amounts awarded against an employer or carrier, either as attorney's fees or as costs, fees, and mileage for witnesses, shall not be taken out of compensation payable under the Act.

c. If an employer offers to pay compensation without an award and a controversy develops over the amount to which the employee may be entitled, the deputy commissioner or the Benefits Review Board shall set the matter for informal conference. If the employer then refuses to accept the written recommendation of the deputy commissioner or Board, he must offer to pay the amount he thinks due. If the employee refuses the offer, hires an attorney, and obtains a larger award, then the deputy commissioner or the Board may, in certain cases, award an attorney's fee based on the increase and payable by the employer.

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d. The Secretary may, upon request, provide persons covered by the Act with legal assistance in processing a claim.

Compensation for injuries where third persons are liable (Section 33)

Section 33 of the Act has been amended to require that if a claimant compromises with some liable person, other than the employer or persons in his employ, for an amount less than the Act entitles him to receive as compensation, the employer shall be liable to pay a sum equal to the excess of the amount determined to be payable on account of such injury over the amount recovered against such third person, but only if the claimant:

a. At or before the time of compromise, obtained written approval of the compromise from the employer and insurance carrier on a form provided by the Secretary; and


b. Filed it, within 30 days after the compromise was made, in the office of the deputy commissioner having jurisdiction.

Discrimination in violation of the Act (Section 49)

Section 49 makes it unlawful for an employer to discharge or discriminate against an employee because he has claimed or attempted to claim compensation from that employer or because of his testimony, past or prospective, in any proceeding under the Act.

a. The Secretary, through officials administering the Act, shall collect a penalty of \$100 to \$1,000 from an employer for each violation of this section. If the penalty is not paid, civil action may be brought in a U. S. district court to recover it from the employer.

b. Further, an employee so discriminated against shall be restored to employment and compensated by his employer for wage loss arising out of each discrimination. However, an employee who is no longer longer qualified to perform the duties of his job shall not be entitled to such restoration or compensation.


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