



Commentary: Lawmakers must stop eroding workers' compensation laws

OPINION

By Thomas McGarity and Sid Shapiro - Special to the American-Statesman



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More than a century ago, Upton Sinclair's groundbreaking book, "The Jungle," shined a spotlight on the many deadly hazards employees routinely encountered in the industrial workplace. In the years that followed, states enacted workers' compensation laws that enabled workers to get some measure of compensation when they were injured as a result of dangerous workplace conditions – without going to court.

But during the past couple of decades, states have "reformed" their workers' compensation laws in ways that have reduced the compensation available to workers and their families. With no national standard, workers are worse off today than they were 30 years ago. It's time for state legislatures, particularly in Texas, to fix broken workers' compensation programs.

Texas, it seems, has led the charge in disadvantaging workers. Texas allows employers to opt out of workers' compensation and impose plans that are **less generous** than the generally inadequate compensation provided by employers who remain in the system.

This is why, in Texas, McDonald's does not compensate workers for carpal tunnel injuries; why Sears can deny benefits if workers don't report injuries by the end of their shifts; and why the nation's largest provider of assisted living facilities, Brookdale Senior Living, does not cover bacterial infections.

Even a recent Department of Labor report on state workers' compensation programs points out the need for national standards to protect workers and ensure fair compensation for work-related injuries. The **report found** that nationwide "only a small part of the overall costs of occupational injury and illness is borne by employers."

In Texas, employers are able to avoid more of the costs of workplace injuries and fatalities than employers in most other states. As of 2014, Texas led the country in worker fatalities for seven of the previous 10 years, perhaps because the state has what one Texas journalist called "some of the weakest protections and hardest-to-obtain benefits in the country."

The system's failure to provide adequate benefits and protections to workers has two important consequences. First, it shifts the costs of fatalities and injuries to workers and their families, as well as to taxpayers who pay for the public support programs to which workers are forced to turn. Second, the companies face greatly reduced financial incentives to make workplaces safer because they do not pay for the consequences of dangerous workplace conditions.

Sadly, employees have little choice but to accept the meager compensation available from employers who opt out. The **Texas Supreme Court has decided** that workers have no legal recourse if an employer who has opted out of the workers' compensation system fires them for bringing a claim.

And Texas isn't alone. Other states have acceded to the complaints of politically powerful corporations that their workers' compensation costs are too high. Ignoring the plight of workers, state legislatures have cut benefits and then cut them again. Employees, most of whom are not represented by unions, have no organized political force to offset the demands of the business community.

It's time for legislatures across the country to fix broken workers' compensation programs by establishing compensation rates that are high enough to make injured workers whole. They should reform workers' compensation policies to raise compensation rates, prevent

employers from opting out of state programs, and protect workers who seek compensation from retaliation by employers.

Alternatively, lawmakers should reaffirm the right of injured workers to seek compensation before juries and provide a level playing field by eliminating the common defenses that employers often claim – most notably the “assumption of the risk” defense, which allows employers to escape liability by arguing that employees knew that the workplace was dangerous but continued to work anyway — as if they had a choice — and the “fellow servant rule,” which frees the employer from liability if it can blame another employee for the accident.

A century ago, a social bargain was struck that substituted a no-fault workers’ compensation system for common law remedies – that is, lawsuits. Since then, state legislatures and courts have allowed employers to avoid much of their end of that social bargain. It’s time for Texas lawmakers and employers to stop eroding these programs and hold up the intended purpose of the original bargain.

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