Ch 5 - Conclusion

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In this final chapter, we will review some of our findings from earlier chapters, with a focus on what those findings tell us about workers' compensation performance and policy issues. The previous chapters focus on three of the most critical issues in workers' compensation policy: benefit adequacy, injury prevention, and return-to-work promotion. This concluding chapter provides our overview of the state of workers' compensation programs on these dimensions in the early twenty-first century, after approximately 100 years of experience in most states and provinces.

BENEFIT ADEQUACY

Our chapter on benefit adequacy departs in two ways from most of the other empirical work on this subject. First, it includes studies of workers' compensation in Canada and our home state of Michigan that raise some methodological issues. Michigan does not have a statutory designation of permanent partial disability (PPD) compensation as most other states do. As a wage-loss state, Michigan law provides that lost earnings benefits shall be paid for the duration of the disability, with a few exceptions. Furthermore, when claims are closed in Michigan, there is no designation of the level of disability, so there is no impairment rating available, but simply a record of the payments made.[1]

Furthermore, the Michigan population of claimants receiving lump-sum settlements includes those who file claims with disputed coverage, questionable etiology, causation issues, level of disability controversy, and many other matters without causative attribution. Therefore, it is difficult to compare findings on the adequacy of workers' compensation benefits in Michigan with states that designate benefits according to impairment ratings and states where PPD is specifically identified and accounted for.

The Canadian workers' compensation systems are similar to those in the United States, with two very significant differences. First, there is generally no private insurance for work-related injuries in Canadian provinces; all workers' compensation insurance is with public entities. Second, benefits are typically more generous, and waiting periods are either shorter or nonexistent. By including studies of these jurisdictions in our review of workers' compensation benefit adequacy, we hope to enlarge the discussion and expand the possibilities. This despite the fact that adding more system observations also raises the bar for generalization and makes policy conclusions even more challenging.

Second, our preference is to use the yardstick of "earnings replacement" as opposed to "loss replacement" to measure benefit adequacy. This means we count both workers' compensation wage-loss benefits paid and actual earnings after the injury as income and offset these against the estimated wages that would have been earned in the absence of injury. We think this is a more useful measure of average benefit adequacy than loss replacement rates. Loss replacement rates consider postinjury earnings as reducing the losses suffered by the injured worker, but they also serve to narrow the focus to just the performance of the workers' compensation system rather than the broader social goal of maintaining workers' incomes during disability.

Previous empirical work on workers' compensation benefit adequacy has concluded that these benefits are far from meeting reasonable standards of adequacy—usually set at replacement of two-thirds of lost wages after taxes. Furthermore, some studies indicate that the performance seems to be worse for the more serious injury cases, as indicated by duration of disability or impairment rating.

Despite the limitations to comparison imposed by major policy and analytical differences, it appears that the Michigan workers' compensation system provides more adequate benefits than many other state systems. This appears to be largely due to the wage-loss orientation and the "spendable earnings" wage replacement formula used in Michigan. Taking account of income, payroll taxes, and family size clearly provides the opportunity for tailoring wage-loss replacement more closely to apparent need across all workers. So, despite a lower maximum benefit in Michigan set at 90 percent of the state average weekly wage, versus 100 percent in most U.S. states, workers' compensation wage-loss benefits in Michigan look pretty good.

If the Michigan benefits appear to be better than in some other U.S. states, they are clearly not as adequate as in the Canadian systems that have had similar wage-loss studies. Benefits in British Columbia and Ontario are significantly more generous than in Michigan or in other U.S. states. This is reflected in higher wage-replacement ratios, higher maximum benefits, and shorter waiting periods (if any). It may also reflect the fact that all the Canadian provinces have exclusive-fund (monopolistic) public insurers for workers' compensation.

Whether this results in more "generous" administration of the systems as well is debatable, but the realized benefits are clearly superior.

There remains the crucial issue of the adequacy of benefits for permanent or long-term injuries. This has been the focus of most of the earlier empirical work on the subject, and the results are not reassuring: The comparative study done by Reville et al. (2001) showed a range of 29 to 46 percent for 10-year loss-replacement rates for the five states included in the study. Tompa, Mustard, et al. (2010) found aggregate loss-replacement rates of around 100 percent for claims with more than 50 percent impairment ratings under both the impairment standard in Ontario before 1990 and the loss-of-earnings-capacity standard in Ontario after 1990. For the "bifurcated benefit" system in British Columbia before 2002, the loss-replacement rate for these claims was 126 percent.[2]

In Michigan's wage-loss system, since there is no impairment rating, we focus just on those claims that receive lump-sum settlements (called "redemptions" in Michigan). While it is no doubt correct that most of these claims would receive permanent partial awards in other U.S. states, there is no way to compensate for the additional proportion of these claims that might be compromised over disputes on coverage, etiology, or other issues. Inclusion of these claims would presumably bias the Michigan measure of adequacy downward.

Yet the lump-sum settlement claims in Michigan showed a 92 percent loss-replacement rate and a 95 percent earnings-replacement rate for the observed average of 4.5 years after the injury. When this is extrapolated to 10 years, including the claim reserves held by the insurer, the earnings replacement rate falls to 67 percent, still a decent performance. Results are slightly better for claims with wage-loss benefit duration over 52 weeks but no lump-sum settlement. Again, benefit adequacy appears to be better in Michigan than in the other U.S. states where benefit adequacy has been studied.

The last issue raised by the benefit adequacy chapter is that of leaving the labor force as a result of a compensable injury. Injured workers who file workers' compensation claims appear to experience a permanent drop in labor force participation similar to that which occurs when the employer goes out of business completely. While the reasons for this drop in labor force participation are unclear, it further complicates the analysis of benefit adequacy. It raises the issue of whether withdrawal from the labor force was caused by the compensable injury itself, the settlement of the claim, or perhaps by other influences. However, it is still troubling to think that so many injured workers are not able to resume their work lives after a compensable injury.

PREVENTION INCENTIVES

As economists, we begin with the assumption that both workers and employers (with their insurer representatives) make choices about providing safety and about their response to injury. Employers provide the workplace and explicitly select the level of safety designed into that workplace. They also adopt human resource policies that may encourage or discourage safe behaviors. Workers may accept the safety environment of the firm, but they still make choices about how careful they will be in preventing an injury and how they will respond to incentives provided after an injury.[3]

What makes this interesting is that the financial incentives for workers and employers contradict each other. Employers seek to minimize costs for a given level of production. This would include compensating wage differentials for the risk of injury, the costs of producing a safer environment, and the costs of workers' compensation insurance. Workers face the loss of income during a period of disability plus the obvious pain, suffering, and inconvenience that may accompany the injury itself. But better workers' compensation benefits (i.e., higher earnings-replacement rates) reduce the incentive for workers to avoid injury.

Although much empirical evidence points to a positive relationship between frequency of injuries and workers' compensation benefits, we feel the evidence is inconclusive that better workers' compensation benefits actually encourage workers to act more recklessly, despite the theoretical basis and despite the fact that claim rates are often higher after benefits increase. This is because there is also a reporting effect observed when compensation is improved. If the incentive to report the injury is increased by more generous benefits, a larger proportion of injuries will be reported, and a higher incidence of claims will be observed. Separating reporting effects from safety effects among injured workers remains a major empirical challenge.

However, making workers' compensation premiums more accurately reflect the previous claims history of individual employers appears to improve employers' safety and prevention efforts, as well as to encourage employers to devote more attention to the worker's successful return to work. Methods to make premium levels more closely match claims history include experience-rated premiums, encouraging more competition in the workers' compensation insurance market, and offering high-deductible plans to employers. All of these devices should help to make the employers' cost of workers' compensation insurance more closely reflect the actual cost of injuries, thereby bringing financial incentives into alignment with policy objectives.

Despite the promise of having insurance premiums more closely match actual claim costs, thus providing improved signaling about prevention behavior, policymakers need to be aware of two concerns. First, claim costs that influence premiums also provide firms with incentives to discourage workers from claiming workers' compensation benefits at all, and such behaviors likely encourage workers to return to work before they are ready. In both cases, claim costs and future premiums will be lower even though it is not clear that the policy objective has been met.

Second, having claim costs influence employer insurance premiums does little to prevent occupational diseases or other injuries that develop over long periods of time. Even self-insured employers who pay all workers' compensation costs directly still have too many such disability claims. Thus, while market-signal incentives could be improved, it does not seem possible to replace direct regulation of safety and health matters with market incentives through the workers' compensation program. We will continue to need public health standards and direct enforcement mechanisms to protect the health of workers and others.

RETURN TO WORK

While preventing work-related disability should be our ultimate aim, and ensuring adequate compensation our intermediate policy goal, returning the injured worker to his or her place of employment is the immediate practical challenge. We will never be able to prevent all injuries and diseases, and maintaining adequate benefits is a political struggle with ebbs and flows, but there should be no dispute about return to work as the goal for all stakeholders in workers' compensation programs.

The "win-win" aspect of return to work is highly motivating, as workers' incomes will be higher and employers' costs will be lower if injured workers can be put back to work more swiftly and safely. But this takes a continuous, concentrated, and coordinated effort to achieve.[4] The term *disability management* has come to represent a workplace-focused approach that includes a set of techniques designed to improve return-to-work performance. These techniques began to be applied in the 1980s as workers' compensation costs increased at unprecedented rates. Leading employers perceived that the "soft glove" was more productive than the "hard fist" when it came to coping with work-related disability. Maintaining contact with the injured worker, improving medical management, and accommodating limitations at work, including job modification, schedule changes, and alternative work assignments, were demonstrated to reduce the incidence and duration of work-related disability.

Furthermore, the disability-management approach aligns naturally with employee retention by the original at-injury employer, which produces vastly superior return-to-work results for the injured worker while it also demonstrates the employer's commitment to the workforce. As well, it may also reduce the cost of disability when viewed from a social perspective (Ben-Shalom 2015). So what has been the impact of disability management techniques on workers' compensation outcomes? Unfortunately, we have to be satisfied with indirect evidence of these impacts. The number of reported occupational injuries and illnesses with any days away from work declined by 66 percent from 1993 to 2013 (BLS 2016). In most U.S. states, three to seven days away from work are required to qualify for wage-loss benefits, so the number of workers' compensation wage-loss claims has obviously declined rapidly as well. The National Council on Compensation Insurance (NCCI) reports a 58 percent decline in such claims between 1993 and 2010 (Sengupta, Baldwin, and Reno 2014). Interestingly, the average duration for workers' compensation wage-loss claims has actually risen over the past two decades. We conjecture that disability-management techniques are more effective at targeting small workers' compensation claims for relatively minor injuries than they are at shortening claims arising from serious or catastrophic injuries. This would explain the increase in duration of claims.

Additionally, the number of cases with restricted work, which includes the effect of many disability management techniques, rose from the mid-1980s through 2000 at the same time that the number of cases with days away from work was declining (Ruser and Wiatrowski 2013). We believe this reflects the spread of disability management techniques through the ranks of employers, insurers, and providers and their subsequent impact on workers' compensation claims and return-to-work outcomes for injured workers.

Credible evidence on the impact of return-to-work programs is sparse but promising. Impacts of up to 40 percent reduction in disability duration have been reported among large self-insured firms (McLaren, Reville, and Seabury 2010). Several review articles have found strong empirical support for the effects of disability management techniques. We conclude that properly motivated disability management techniques can remove many barriers to return-to-work for workers with impairments, which reduces both workers' compensation costs for employers and lost wages for workers. Disability management holds considerable promise for improving this critical performance dimension of workers' compensation systems. This is reflected in the plethora of state policy innovations that directly or indirectly support or encourage these interventions.

There remain some concerns about the potential for disability management to descend into claims-discouraging activities, or "perverse disability management," which has the goal of reducing claims volume or severity to reduce workers' compensation costs without benefit to the injured worker. We believe that workers' compensation claims suppression is real and is practiced by some employers and their insurers for financial gain. However, we also believe that, overall, disability management has been a positive development in workers' compensation systems and has benefited both injured workers and their employers. We need better focus and more measurable outcomes to ensure that these benefits are realized.

So, where do workers' compensation programs stand after a century of experience? The ProPublica/NPR series of publications beginning in 2015 raised serious questions about the performance of our state workers' compensation systems.[5] The title of the initial article, "The Demolition of Workers' Compensation" (Grabell and Berkes 2015), prompted widespread reaction, both pro and con.

According to the U.S. Department of Labor, "Recent years have seen significant changes to the workers' compensation laws, procedures and policies in numerous states, which have limited benefits, reduced the likelihood of successful application for workers' compensation, and/or discouraged injured workers from applying for benefits" (USDOL 2016, p. 2).

Furthermore, "Some state legislatures continue to attempt to reduce workers' compensation costs, and proposals for statutory amendments that restrict workers' benefits or access have become increasingly bold" (USDOL 2016, p. 2). This has extended up to and including the "opt out" legislation in Texas and Oklahoma and the discussions in Tennessee and South Carolina. It remains to be seen whether an effective replacement for traditional workers' compensation programs will emerge from these experiments.

However, we find that for the three performance dimensions examined here, things are not quite so bleak in the workers' compensation world. First, there are design elements, such as the spendable earnings approach within a strict wage-loss system, that seem to provide better adequacy of workers' compensation benefits than the medical-based impairment-and-gross-earnings-replacement approach. Second, workers' compensation and other market incentives do appear to improve employer safety and prevention performance. They also seem to affect the claiming behavior of injured workers. Third, disability management techniques can significantly reduce the burden of work-related disability for both workers and employers in our workplaces.

We hope this modest volume will help policymakers to improve the performance of these social insurance systems during their second century. There are several ways forward, and they have been implemented in best practice among several state systems. What seems to be lacking is the political resolve to change these century-old workers' compensation systems to move toward better policy and practice in the future.

Notes

1. There may also be an amount reserved for future medical benefits, which must be reported to CMS at the federal level to facilitate coordination with possible Medicare or Medicaid benefits.
2. The bifurcated system provided that the higher of the impairment or the loss-of-earning-capacity benefit should be paid.
3. Of course, the level of safety provided by the firm may also be a factor in their choice of employer.
4. See Gifford and Parry (2016) for discussion.
5. For a list of this series of articles, see ProPublica (2017).