

“Workers’ Comp” at center of state budget impasse

By Jim Nowlan

Whenever talk comes up of compromises necessary to end the lamentable Illinois budget impasse, business-friendly changes in workers’ compensation law are mentioned first.

What is “workers’ comp,” as it is called; why is it important, and should we change it?

A century ago during the Progressive Era, business, workers and insurance companies came together to support laws, soon adopted by all the states, to provide that workers would be compensated on a “no fault” basis for injuries incurred on the job.

Arbitrators employed by each state would determine the severity of each injury and the amount of medical costs and lost wages to be compensated. Employees gave up the right to sue their employer as part of the bargain, and employers were required to buy insurance to cover their claims.

Business benefited by avoiding the possibility of huge jury awards in favor of injured workers. Workers gained from the likelihood of more timely compensation than from a prolonged lawsuit, and insurers wrote more business.

Work is dangerous, some tasks more so than others, so employers engaged in hazardous work such as mining pay more for their insurance than do businesses that employ white collar workers. A company that incurs numerous injury claims see its insurance costs go up, so there are incentives to make the workplace safe.

Workers' comp (WC) insurance is a major business cost, at about \$2 per \$100 of workers' wages nationally in 2014, though much less than health care costs for business, at about \$12.52 per \$100, according to the U.S. Bureau of Labor Statistics.

I was surprised to learn from the 2014 annual report of the Illinois Workers' Compensation Commission that WC costs in our state have come down from \$5.48 per \$100 of wages in 1994 to \$2.35 in 2014. This has largely resulted from improved workplace safety, according to Jay Dee Shattuck, an employment expert in Springfield.

But costs nationally have also come down. Illinois businesses often cite the WC costs in Indiana, which at \$1.06 per \$100 of wages, are among the lowest in the nation; costs in Iowa are \$1.88 and in Wisconsin, \$1.92.

So Illinois business is at a cost disadvantage vis-à-vis neighboring states.

In the halcyon economic days of the 1950s, when the rest of the developed world was prostrate from the ravages of World War II, American manufacturing accommodated expansive labor costs.

Caterpillar could sit down, for example, with United Auto Workers Local 974 in Peoria, ask the union what its workers needed, then add on a good profit and price its earth movers accordingly.

Today, all is different. Caterpillar faces Komatsu and other tough competitors. Business scraps for every dollar it can save, including those from WC.

In March 2015, the non-profit investigative organization ProPublica released a major report on WC coverage. The assessment is sympathetic to workers and contends that the states are in a race to the bottom over WC coverage and costs.

ProPublica notes that since 2003, 33 states have reduced medical and/or lost wage benefits for disabled workers.

In Illinois, Gov. Bruce Rauner and the business community have proposed several basic changes.

For example, an injury must be work-related, Rauner contends. This issue of “causation” is hotly contested by companies and labor. Illinois business contends the employer is often on the hook for injuries that are primarily caused outside the workplace.

And repetitive injuries should be compensated only to the extent that the injury is caused in the workplace and not also by personal habits such as running and past athletic activities.

Attorneys for workers retort that Rauner’s points may sound reasonable but that each WC case is unique and complex. As one says, “How much of a back injury do you assign to the workplace and how much to a degenerative spine? We all have degenerating spines!”

There may be places where Illinois WC law can be tweaked to eliminate situations in which employers pay claims wholly unrelated to the workplace. Yet we have to avoid, somehow, a race to the bottom among the states that results in workers being denied fair recompense for workplace injuries.

I predict that WC in Illinois will be changed somewhat as part of a state budget compromise. Politically, Gov. Rauner badly needs some “wins” in his negotiations, and Democratic Speaker Madigan probably sees minor WC changes as far preferable to relenting on bigger issues like collective bargaining and term limits.