

The North Carolina Workers' Compensation System: Medium Bang for Not Much Buck

by Leto Copeley



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North Carolina's workers' compensation system is one of the most efficient and low cost in the nation. According to the most recent data, the state's workers' compensation costs as a percentage of payroll are the eighth lowest in America.¹ Similarly, medical costs and cash benefits per case in North Carolina are at or below the national average.²

Nevertheless, business and industry claim that North Carolina's workers' compensation system is too expensive and detrimental to economic growth. Industry groups, especially manufacturers, are lobbying the General Assembly to alter the workers' compensation system. Such groups hope to limit payments to workers and/or alter the structure of the North Carolina Industrial Commission. Such changes are unnecessary.

Premiums Have Fallen

Contrary to industry claims, workers' compensation premiums have not spiraled out of control. In fact, rates have fallen by 27 percent since 1995, according to the North Carolina Department of Insurance (See Graph 1).³ In 2004, for example, insurers requested a 9.1 percent increase, but received a 0.5 percent *decrease* (See Table 1).⁴

As of the writing of this article, the North Carolina Department of Insurance had approved rate increases for the year 2005 of two percent for the voluntary market and four percent for the assigned risk pool.

This decline is remarkable given that most states have experienced steady premium increases over the past decade. Low premiums are one reason why North Carolina consistently ranks as one of the most business-friendly states in America, according to *Site Selection* magazine's annual ranking of state business climates. North Carolina topped the survey for three consecutive years (2001–2003) and currently ranks fifth in the nation.⁵

The drop in workers' compensation premiums is directly attributable to the 1994 overhaul of the state's Workers' Compensation Act (WCA). Among other changes, the WCA limited an injured worker's right in most cases to obtain medical compensation to no more than two years after the last payment of compensation. It also enabled employers to require pre-authorization of medical procedures in certain circumstances.⁶

Benefit Costs Are Moderate

Workers' compensation costs in North Carolina have been contained further by a variety of statutes and judicial interpretations. Taken together, these factors have helped control medical costs and resulted in the provision of modest benefits to workers.

Minimum Number of Employees

With the exception of certain subcontractors⁷ and employers of domestic, farm, sawmill, and logging workers, to whom separate rules apply,⁸ North Carolina employers need not provide workers' compensation coverage unless they employ three or more employees.⁹ The majority of other states require employers of one or more employees to provide coverage, with very limited exceptions.¹⁰

Injury by Accident

The North Carolina appellate courts have limited the scope of the injuries covered under the WCA so that it protects fewer injured workers than do the laws of other states. The North Carolina Act, consistent with the workers' compensation statutes of other states, does cover "injury by accident" arising out of the employment.¹¹ However, the meaning of the term "by accident" varies from state to state.

It is universally accepted that for an injury to be "by accident," it must be an unintended and unexpected consequence aris-

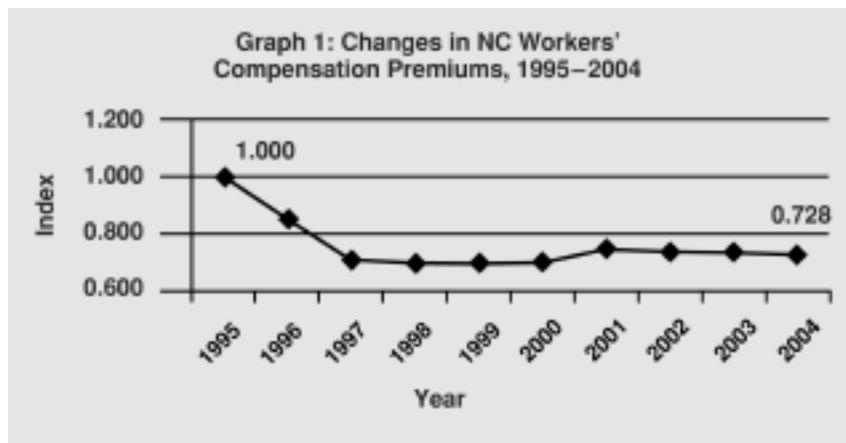


Table 1: Changes in NC Workers' Compensation Premiums

Year	Effective Date	% Requested	% Approved
1995	7/28/95	0.00	0.00
1996	4/1/96	-15.40	-15.40
1997	4/1/97	-13.70	-13.70
1998	4/1/98	-1.10	-1.10
1999	4/1/99	0.00	0.00
2000	4/1/00	3.40	0.00
2001	4/1/01	4.60	4.60
2002	4/1/02	-1.20	-1.20
2003	4/1/03	0.25	0.00
2004	4/1/04	9.10	-0.50

ing out of the work performed. In the majority of states, the term “by accident” is also interpreted to include those situations in which an injury is a result of the usual exertion or exposure of the employee’s job.

In North Carolina, however, the courts have read into the Act a requirement that the *cause* of the injury, rather than the *result* of the injury, be “an accident.” Our courts have repeatedly interpreted the WCA to provide that a worker injured or killed while performing her regular duties in the usual and customary manner will not be entitled to workers’ compensation benefits.¹²

The North Carolina legislature has overridden the courts’ narrow construction of the Act only with respect to back injuries and hernias, which are now compensable if the injury is the direct result of a “specific traumatic incident.”¹³ However, these changes do not affect workers who injure other body parts while performing their usual employment—no matter how taxing.

For example, the majority of jurisdictions now hold that when the usual exertion of the job leads to a body part suddenly breaking or letting go, the injury is acci-

dental.¹⁴ Only seven states, including North Carolina, retain the minority view of refusing compensation for such injuries in the absence of unusual strain.¹⁵ Similarly, the number of jurisdictions providing that heart attacks resulting from the usual exertion of the employment are compensable is three to one over those, such as North Carolina, which require unusual exertion as a prerequisite to compensability.¹⁶

Cessation of Partial Disability Payments at 300 Weeks

If a North Carolina worker is permanently partially disabled as a result of his injury (meaning that he sustains only a partial loss of his ability to earn wages), and if he cannot adequately be compensated for this wage loss by the funds he would receive for a disability rating to the injured body part, he will be entitled to partial disability benefits on a weekly basis—but only up to a maximum period of 300 weeks from the date of his injury.¹⁷ In many other states, this period of partial disability lasts much longer. A brief review of figures published by the United States Department of Labor for the year 2001, the most recent

year for which national figures are available, shows only four states with a duration of permanent partial disability shorter than North Carolina’s 300 weeks.¹⁸

Compensation for Disfigurement and Loss of Body Parts

An injured worker in this state who sustains disfigurement to a body part for which there is no permanent partial disability rating is entitled to an award from the North Carolina Industrial Commission, to be set by the discretion of the Commission, but not to exceed \$10,000.¹⁹ In cases of serious facial or head disfigurement, the Commission may award compensation in an amount up to \$20,000.²⁰ Although the statute does not require that the disfigurement hamper an employee’s earning capacity or ability to secure employment, the North Carolina courts have imposed this requirement, thus reducing the number of workers entitled to the compensation.²¹

If an injured worker sustains an injury to an important external or internal organ or part of the body that is not listed in the schedule of injuries contained in N.C. Gen. Stat. § 97-31, she is entitled to an award in the discretion of the Commission not to exceed \$20,000.²² Thus, an injured worker whose injury entitled her to the maximum workers’ compensation rate of \$688 per week for the year 2004 would be entitled to receive a maximum of 29 weeks of benefits for the loss of a body part such as a lung. For comparison, this amount is just slightly more than the same worker would receive for the total loss of a third finger.²³

Death Benefits

If an injured worker dies from his injuries in North Carolina, his dependents are entitled to receive workers’ compensation benefits for a maximum period of 400 weeks, or until the age of majority if the dependants are minor children at the time of the death.²⁴ By contrast, in 33 other states, workers’ compensation benefits are paid to widows or widowers for life, or until remarriage, thus providing more of an economic cushion in the majority of cases.²⁵

Rising Costs, but Falling Claims

While North Carolina has low premiums and moderate benefits, the cost per successful claim has risen in recent years. This

is the fact most often cited by industry as proof of a dysfunctional system. Yet the rising cost of successful claims is not caused by the state's workers' compensation system. Rather, it is a national trend caused by a variety of external factors.

The escalating price of medical care is perhaps the most significant factor. About 50 percent of the total payout in workers' compensation cases is attributable to medical expenses. Medical costs nationwide have increased significantly in recent years, unrelated to workers' compensation. These increases in medical care costs have inevitably increased the medical component of workers' compensation claims.

Also, wage growth has increased the cost per successful claim. The remaining 50 percent of the total payout in workers' compensation cases is attributable to wage loss benefits known as indemnity payments, which equal two-thirds of an injured employee's average weekly wage. Therefore, indemnity payments increase each year along with wages.

At the same time that costs have risen, the number of workers' compensation claims in North Carolina has fallen. In fact, the number of claims has declined by roughly a third since 1995. The drop in claims, coupled with investment income, has allowed insurers to reduce premiums despite the rising cost per claim. Thus, North Carolina's workers' compensation system remains financially sound and is not being overwhelmed by costly claims.

A push is underway to change North Carolina's workers' compensation system along lines favorable to industry. However, the evidence clearly demonstrates that our state's system is relatively inexpensive and quite efficient. Given the nature of North Carolina's workers' compensation system, the changes advocated by industry groups are unnecessary. ■

¹ Actuarial & Technical Solutions, Inc., WORKERS' COMPENSATION COST STATE RANKINGS, cited by Charlotte, N.C. Chamber of Commerce, November 2004.

² WORKERS' COMPENSATION POLICY REVIEW, Vol. 4, Issue 5, September/October 2004, at 38-39.

³ N.C. Department of Insurance Rate Data

⁴ N.C. Department of Insurance Press Release, November 6, 2003.

⁵ SITE SELECTION MAGAZINE, 2000-2004.

⁶ N.C. Gen. Stat. §§ 97-25.1; 25.3.

⁷ See N.C.Gen. Stat. § 97-19.

⁸ Employees who provide domestic services are not covered by the Act. N.C. Gen. Stat. § 97-2(1). Employers of farmworkers are exempt from the Act unless they regularly employ ten or more full-time nonseasonal agricultural workers; sawmill and logging operators, whose principal business is unrelated to sawmilling or logging, are exempt unless they employ ten or more employees who saw and log at least 60 days in any six consecutive months. *Id.* All employees whose work involves the use or presence of radiation are covered. *Id.*

⁹ N.C.Gen. Stat. § 97-2(1).

¹⁰ Larson's Workers' Compensation Law § 74.01, nn. 7-11.

¹¹ N.C. Gen. Stat. § 97-2(6).

¹² See, e.g., Conrad v. Cook-Lewis Foundry Co., 198 N.C. 723, 153 S.E. 266 (1930); O'Mary v. Land Clearing Corp., 261 N.C. 508, 135 S.E.2d 193 (1964).

¹³ N.C.Gen. Stat. §§ 97-2(6);(18).

¹⁴ Larson's Workers' Compensation Law, § 43.02.

¹⁵ *Id.*, § 43.02[3].

¹⁶ *Id.*, § 43.03[a].

¹⁷ N.C. Gen. Stat. § 97-29.

¹⁸ OFFICE OF WORKERS' COMPENSATION PROGRAMS, U.S. DEPT. OF LABOR, STATE WORKERS' COMPENSATION LAWS, November 26, 2003, www.dol.gov/esa/regs/statutes/owcp/stwclaw/stwclaw.htm.

¹⁹ N.C. Gen. Stat. § 97-31(22).

²⁰ N.C. Gen. Stat. § 97-31(21).

²¹ See, e.g., Liles v. Charles Lee Byrd Logging Co., 309 N.C. 150, 305 S.E.2d 523 (1983).

²² N.C. Gen. Stat. § 97-24.

²³ N.C. Gen. Stat. § 97-31(25 weeks)

²⁴ N.C. Gen. Stat. § 97-38

²⁵ *State Workers' Compensation Laws in Effect on January 1, 2002 Compared with the 19 Essential Recommendations of the National Commission on State Workmen's Compensation Laws*, prepared by Glenn A. Whittington, Chief, Branch of Planning, Policy and Review, Division of Planning Policy and Review, Office of Workers' Compensation Programs, U.S. Dept. of Labor, Employment Standards Administration.

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