

Workers' Compensation in New York State: An Issue of Human Rights

What is the New York Workers' Compensation System?

New York's Workers' Compensation Board (WCB) was created in 1914. It is supposed to ensure the human right to health and economic security for the quarter of million² workers in the state who become injured on the job each year. It protects employers from employee lawsuits and severely limits the constitutional right to access the courts in cases of negligence and malfeasance by employers. In exchange, workers are promised no fault coverage for injury, access to medical treatment, death benefits, and wage replacement.

I've been injured and waiting for assistance for 7 years. I need this respirator to walk anywhere... so there is no work I can do. We live off loans from friends. I owe one \$9,000... My three kids are having to grow up too fast because I am sick, we don't always have enough food and the landlord screams and abuses us. It wasn't like this when I was working, my wife didn't have to live like this, my kids had food.

— 32 year old,
injured while working at a grocery store¹

Does the WCB Protect the Human Rights of Workers with Injuries?

In practice, the WCB does not meet its responsibility to protect the human rights of workers. Instead, workers are forced to prove their need for benefits in a grossly unbalanced match against powerful insurance companies and lawyers. Early in the process, workers are forced to go to low quality doctors paid by insurance companies to assess whether a worker has been injured on the job. In conflict with medical ethics, these doctors, misleadingly called Independent Medical Examiners (IMEs), go to great lengths to deny claims and give false diagnosis.

Much too often, the process turns into a bureaucratic and procedural nightmare, where workers are humiliated, stigmatized and subject to investigations that violate their right to privacy. Very little of this process is shaped by objective medical review or public health considerations. Indeed, the WCB is rife with unjustified delays in access to medical care and wage replacement, rejection of legitimate injuries, obstacles for non-English speakers and inadequate rates of compensation.

The strain on workers can be extremely severe. Many workers develop new mental or physical problems as a result of their experiences before WCB, for which they might never receive support. With limited resources and unable to work, these workers and their families face hunger, extreme insecurity, and a heavy burden of guilt that they are no longer providing for their families. Essentially, workers begin with sickness and injury and often end up sicker and more injured, creating a devastating impact on human dignity and well-being. There are cases where workers facing these hardships have committed suicide.

Many Workers with Injuries Struggle to Survive

Even WCB's stated goal of resolving cases in 18 months is not a reasonable period of time for workers who often have no other source of support or medical care,³ and frequently the formal hearing process takes much longer. During this period, workers are unable to take care of life's basic needs. Some workers suffer several decades through unfathomable delays to resolve claims. These dangerous delays, coupled with procedural abuses involving literally dozens of hearings, may coerce workers into accepting inadequate settlements once their resources and energy are thoroughly exhausted.

Workers may often lack medical care while awaiting a decision from WCB. In particular, private insurers will not cover injuries that should be covered by workers' compensation. While some doctors accept patients hoping that the WCB will ultimately cover care, long delays make it less likely for physicians to continue with this arrangement. In such cases, a worker may have to become impoverished enough to become eligible for public assistance or Medicaid in order to get care while the case is pending. Many physicians drop out of the system, making appropriate care unavailable in some areas of the state or for certain disabilities.

It is not uncommon for workers to spend their last dollars paying medical expenses out of pocket. Pressured by debts and lawyers who want to settle cases quickly, some give up long term medical coverage in exchange for a modest lump sum settlement, not adjusted for inflation and arbitrarily approximated to what they might have collected for life.

Workers also suffer further injury and complicated multiple claims for workers' compensation when, out of sheer desperation, they have to resume working while still injured.

"During all this delay and denial, we are left without income or medical treatment. Many of us are forced to return to work to survive, and end up making our injuries worse. Those of us too disabled to work become dependent on our family or on public assistance. Sometimes we become homeless."⁴

WCB Fails to Protect Workers from Poverty

Workers who win their cases still have difficulty making ends meet. Although benefits rates were recently increased, much more work needs to be done to adequately reform the system. The minimum was raised from \$40 to \$100 per week and the maximum (which will further increase incrementally until it reaches 2/3 of the average weekly wage) went from \$400 to \$500 per week. However, until the maximum rate becomes indexed to average weekly wages, it remains relatively low, and only a fraction of workers receive maximum benefits. The minimum remains a fixed amount, not indexed to increase over time. The recent changes also put a cap on permanent partial disability benefits of only ten years. This category includes serious injuries, such as missing limbs, and workers with total disability who have been misclassified or who accept this category as a settlement in order to expedite their cases. None of the recent changes to NY's workers' compensation law address the procedural disasters, delays or biased medical diagnosis.

WCB Subjects Workers to Mistreatment and Fails to Provide Accessible Information

Workers are often forced to go to dozens of hearings with little or no explanation. Non-English speaking workers have even more trouble accessing information because they are unable to understand what is being said at proceedings. Additionally, the WCB Judges and even the workers' own lawyers often exclude or silence them, and question their credibility in offensive and degrading ways. The testimony of doctors working for insurance companies is used to falsely accuse workers of fraud and deception. Indeed, despite the fact that the workers' compensation system has an extraordinarily low rate of fraud, insurance companies — who themselves engage in very dubious practices — do all they can to stigmatize workers with injuries, characterizing them as lying, lazy, or crazy. Claimants have been told by insurance companies that serious injuries, such as toxic chemical exposures, are "all in their head," while legitimate and sometimes life-threatening claims are routinely denied.

The WCB Violates Fundamental Human Rights

Becoming injured on the job should not strip workers of their human rights to health and economic security. Currently, the WCB lacks the procedural fairness to protect these rights. The WCB practices and policies fail to make medical care and wage replacement adequate and accessible to the people whose lives depend on them. The quality of medical services is compromised by the influence of profit-driven insurance companies. In addition, health coverage is only for injuries apparent at the moment of injury and usually excludes care for conditions resulting from side effects of drugs, mental health problems, inaccurate diagnosis, inadequate attention to degenerative processes, and medical complications that are by-products of the initial injury or a consequence of hardships endured during the WCB review process.⁵

In short, workers' compensation programs must be better integrated into the overall health system and administered with a focus on health and effective mechanisms to protect the rights of workers. Workers with injuries often demonstrate a fierce desire to contribute to their families and communities. They have a human right to the support and care necessary to heal and become an active part of society.

*"All workers with job related injuries are whole human beings capable of adapting to loss and creating new ways to accomplish meaningful participation while contributing to help make this world a better place. Even individuals with total disability can be inspired to positively impact their families, neighbors and society."
— 36 year old New Yorker, injured ten years ago while working at a fashion magazine*

¹ Excerpt from NESRI interview with a worker with an injury.

² Bureau of Labor Statistics, <http://www.bls.gov/iif/oshwc/osh/os/pr047ny.pdf>.

³ Report by the New York State Office of the State Comptroller, Division of State Services, *Workers Compensation Board – Select Aspects of Claims Processing*, 2005-S-22 (August 31, 2005).

⁴ From National Mobilization Against Sweatshops (NMASS) "It's About TIME! Campaign for Workers' Health website, <http://www.nmass.org>

⁵ "As well as being culturally acceptable, health facilities, goods and services must also be scientifically and medically appropriate and of good quality," GC 14, Par 12 (d).