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Workmen's Compensation in the States

**THIRTY-TWO States Have Passed Legislation in Five Years—
Two Systems in Operation—Insurance by Employers of Liability—Importance of Accident Prevention—Tendency is to Increase
Operation of the Acts to Include all Employments and Injuries.**

IN the United States since 1910, 32 out of the 48 states have adopted, in some form, workmen's compensation laws. With the passage of compensation acts in Maine and Vermont in April, 1915, all the New England states have now adopted the compensation principle. Recently, Pennsylvania has joined the other great industrial states in the eastern section of the country in adopting this industrial movement. Indiana, the last of the middle western states to deal with the problem of industrial accidents, passed an act in March, 1915. Montana, Wyoming, Colorado, and Oklahoma adopted compensation statutes in the legislative sessions of 1915.

At the present time all states west of the Mississippi River with the exception of north and South Dakota, Idaho, Utah, New Mexico, Missouri and Arkansas have compensation legislation. In the eastern section all the states north of Tennessee and Virginia with the exception of Delaware have passed such legislation. The economic character of this legislation is well shown by its development first in those states which are largely industrial. In the southern and in the agricultural states the problem of dealing with industrial accidents is not so acute, but these states will probably follow the lead given.

Perhaps no single piece of social legislation so revolutionary in character and important in its effect has shown such rapid and widespread development, says a writer in a recent publication of the Alexander Hamilton Institute. It involves the abolition of "fault" and "negligence" and the substitution of a new idea, namely, that industry should bear the financial burden of industrial accidents. It is based upon the idea that the killing and maiming of workers is an inevitable incident of modern production, the cost of which must be borne, not by the worker, but by the industry that caused the injury. It is understood that the cost will be distributed by means of insurance and passed on to the consumer as part of the cost of production.

The old system of negligence-or fault grew up before the introduction of machinery or power, in times when manual tools were the only ones used. With the development of modern industry the old rules of negligence became inapplicable and it became necessary to devise a system suited to modern conditions. This meant the abolition of the old defences of assumption of risk, fellow servant and contributory negligence, the doing away with costly and troublesome litigation and delay, excessive damages and more frequently no damages at all, and the substitution of a definite system of compensation for all injuries without regard to fault. More than this, it meant the payment of compensation at once when the injured worker is most in need, and thereafter in weekly instalments paid in the same manner as wages and in a proportional amount. In case of death, payment of burial expenses and compensation to the dependents of the deceased employé until they are able to take care of themselves.

The first state to attempt this legislation was New York. An act was passed in 1910 making it compulsory for employers in certain specified hazardous industries to pay com-

pensation to their injured employes. This act was declared unconstitutional by the Court of Appeals in the case of *Ives vs. South Buffalo Railroad Company*, 201 N.Y., 271. The court held that it was a taking of property without due process of law, in that it compelled an employer who was without fault to pay compensation to an injured employé. The decision in this case has been criticized and has not been followed by other courts. It had a marked effect upon all subsequent legislation. To avoid the objections of the New York court, every state except Washington adopted an expedient which has been called the elective system, in which the employer agrees or contracts to pay compensation according to the provisions of the statute.

Election is accomplished in several ways: in some states the employé is required to signify his acceptance by an affirmative act such as filing notice with an administrative board; in others, he is presumed to have accepted unless he files a notice to the contrary. To secure adoption every act is armed with a club; unless the employer accepts, his common law defenses are taken away and he faces suits at law with no limit to the damages and almost sure recovery in every case. In most acts the employé is assumed to have accepted unless he files notice to the contrary, and in such case the defenses can be pleaded against him. The elective system has not been satisfactory, and a number of states have amended their constitutions expressly authorizing compulsory acts. Constitutional amendments are pending in several other states.

Compensation laws are by no means uniform. Of the thirty-two statutes, no two are exactly alike. They differ in important features, in methods of election, amount of compensation, methods of insurance, etc. They may be divided roughly into two distinct systems: the state insurance plan and the direct payment plan. The former provides for the creation of a state fund to which employers, and in one or two cases both employers and employes, contribute by the payment of premiums. The fund thus created is administered by the state for the benefit of the injured employes of the subscribers. Under the direct-payment plan the law specifies the amount of compensation to be paid for particular injuries and the employer pays the compensation by agreement directly to the employé or his dependents. In case of disputes the amount is fixed by court proceedings, arbitration, or by an administrative board.

Practical considerations require that some limitation be placed upon the employments to be covered by compensation laws. Farm labor and domestic servants are excepted from the operation of the act in practically every state, and in a number of states casual employes are also excluded. Others limit the operation of the law to employers having more than a certain number of employes—from one to five. Quite a number of the states limit the act to hazardous employments. The latter method of classification results in confusion and litigation and has not been satisfactory.

"All personal injuries arising out of and in the course of the employment" is the clause employed by practically