RELATION OF WORKMEN'S COMPENSATION TO OTHER SOCIAL INSURANCE

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We conceive of social insurance as being a system of protection for earners which is imposed by law. The objective of this article should be consideration of forms of such insurance other than social security, workmen's compensation, and unemployment compensation. There is one such type of insurance which is most readily brought to mind, and that is insurance to provide temporary disability benefits.

It is, of course, platitudinous to intone that social insurance is here to stay. To those persons who believe that social insurance has been a boon to workers and their families and to society in general the challenge is ever present to improve existing plans of social insurance and to forge ahead to new plans to fill the needs of people. To those individuals there has been apparent the obvious gap in our system of social insurance. The gap exists between workmen's compensation and unemployment compensation in providing benefit payments to workers who are unemployed because of illness which has no relation to occupational injury or occupational disease. To restate the proposition, there is the need to provide the economic minimum for subsistence to workers who, through no fault of their own but because of sickness, are unable to work, who are eligible for benefits neither under the workmen's compensation law nor under the unemployment compensation law of this state.

During the last three decades there has been progress in the entire field of social insurance, too fast to suit some and too slow to suit others, but representing a tremendous degree of advance from the attitude of complete indifference by society to the economic needs of the unfortunate. However, the advance has been on a front too restricted, for it has failed to meet the problem of the sick worker.

Ohio workers are, of course, covered by federal social security and are thus the beneficiaries of the old age and survivors' insurance provisions under that program. Under that system they are eligible for disability benefits for permanent total disability at the age of fifty or over.

Temporary disability benefits are available to Ohio railroad workers under the federal law covering them.

In some establishments the employer and the employees have sought to cover the gap by providing, through collective bargaining, for private pension plans, supplemental unemployment insurance, and various forms of group insurance, including health and accident insurance. For the non-railroad worker, the only relief for temporary disability is the private coverage, if he is fortunate enough to have it.

It is the belief of the writer that the arguments in support of workmen's compensation and unemployment compensation do equally

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justify a program of temporary disability benefits. A basic compassion for the plight of fellow men and a sense of social imagination, which enables one to appreciate the plight of the sick wage earner, dictate that the painful and deleterious results of loss of earnings because of illness be minimized as far as practically possible. Then, too, the arguments as to the economic good in the maintenance of buying power and lightening the burden upon public relief authorities are valid.

It is the intention of this article to once more remind people who are interested of temporary disability insurance. It is not the writer's desire to discuss critically the technical details of temporary disability insurance or to make recommendations as to the precise specifics of a law to cover this field that should be enacted for the State of Ohio, nor, it should be confessed, does it lie within the ability of the writer, who is not an expert or a specialist in the field, to adequately perform these chores.

To those who have followed the history of social insurance in the State of Ohio, the proposal for temporary disability benefits is not new. In 1949, the General Assembly of this state established a commission "for the investigation and study of the problem created by temporary unemployment due to a disability or sickness incurred outside the scope of one's employment, or while unemployed, and therefore not compensable under present workmen's compensation or unemployment compensation laws."[1]

On February 21, 1951, the Disability Unemployment Insurance Commission thus created transmitted to the General Assembly its findings and recommendations. In the report of the Commission, the disability insurance systems in existence were examined and compared. Testimony was received by the Commission from spokesmen of workers and employers and from other members of the public. Needless to say, there was disagreement in the views of the representatives of the unions and the management associations. Organized labor's position, as stated by Mr. Phil Hannah of the Ohio Federation of Labor, was:

> The unions will continue to push for these plans, (referring to private health and welfare plans) and at the same time, a compulsory government system should be set up on an adequate and sound basis to provide a minimum protection above which these negotiated plans can function and which can be applied to all workers in the labor force on a uniform basis.[2]

This statement of policy was implemented by the testimony of Mr. Jacob Clayman, Secretary-Treasurer, Ohio CIO Council:

> Sickness is the scourge of the average American family. The plain fact is that the ordinary American can't afford to be

[1] Amended S. Bill No. 134, 98th Gen. Assembly; DISABILITY UNEMPLOYMENT INS. COMM'N REP. 4, 95th Gen. Assembly.

[2] Comm'n Rep., *supra* note 1, at 21.

> sick. . . . In the United States there is no moral or economic reason for continuing to deny American workers an adequate form of social insurance during their periods of sickness.[3]

Employer representatives voiced the opinion that the kind of protection here contemplated is a personal matter not properly to be considered within the orbit of public legislation. Mr. Frank C. Manak, of the Ohio Manufacturers' Association and Ohio Chamber of Commerce, expressed that feeling:

> Compulsory cash sickness legislation is the first step into a new area of social legislation where the state for the first time is considering close inspection of the purely personal life of the individual without his consent.[4]

The Commission, in its recommendations, found that there was a need in Ohio for a state-supervised system of cash disability benefits. In taking notice of the existence of private and voluntary plans, the Commission noted the desirability of "assurance" of protection by a state-supervised plan. The Commission recognized that the existence of voluntary and contractual welfare benefit plans in industry demonstrated that the need existed to provide broader participation among working men in this type of protection, and that there was also a need for uniformity of minimum benefits and duration scale. It pointed out that legislation in this field would lighten the load of state relief agencies. It stated:

> The denial of unemployment compensation benefits to a claimant who becomes disabled, and thus unable to accept suitable work when offered, is a shortcoming in that system and should in justice and fairness be remedied. It seems self-evident that the propositions above advanced argue with double force for the maintenance of income to a disabled unemployed wage earner.
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> These desirable objectives may be attained within the framework of our democratic system. It is the right and duty of our state to thus foster the welfare of its citizenry. No other means will suffice.[5]

It was recommended by the Commission that there be created a state insurance fund operating competitively with private insurance carriers or self-insured plans of employers, the Commission stating that this was not to be considered as an argument in support of a similar system for workmen's compensation. The recommendation was that both the

[3] *Id.* at 27.
[4] *Id.* at 30.
[5] *Id.* at 41.

employer and the employees contribute to the fund and that the Industrial Commission was best adapted for the administration of this system.

It was further recommended that there be no limitation upon the freedom of employers and employees to negotiate private welfare plans and that full credit be given to such private plans to the extent that they provide benefits authorized by the state law.

There were other policy recommendations which consisted of proposed weekly cash benefits to run between ten dollars and thirty dollars, a twenty-six week maximum duration period during any period of fifty-two weeks or during one period of disability, no coverage for pregnancy, exclusion of illness which is self-inflicted or which is the result of an illegal act or an act of war, exclusion of any disability for which claimant is subject to suspension or disqualification under the unemployment compensation law and a waiting period of seven days. It must be remembered in connection with the amount of benefits recommended, that this recommendation was made in 1951 and that since then there have been increases of benefits in workmen's compensation and unemployment compensation.

The temporary disability benefit laws that are now existent are in California, New Jersey, New York, Rhode Island and under the federal system for railroad workers. The main difference between the plans of the five jurisdictions is the status of private plans and their relation to the statutory system. Under the California and New Jersey laws, private arrangements which meet the statutory requirements are permitted as a substitute for state fund participation. In New York, the employer is required to provide equivalent benefits at no greater cost to the employee. Under the federal statute for railroad workers and the Rhode Island statute, benefits are paid without regard to individual or private plans.

In California and New Jersey, the system is competitive between the state funds and the private plans, with the state fund being used if private plans are not elected by the employer and a majority of the employees. In New York, there is competition between the employers' private insurance fund, the private carrier, and the state fund which is maintained by the state as a state-owned insurance fund.

For the most part the plans are financed by employee contributions. In California the fund is financed by the employees, who are taxed one per cent of the first $3,600 of their wages. In New Jersey there is a three-fourths of a per cent tax on the employee on the first $3,000 of his wages, one-third of this amount being paid into the unemployment fund, and there is a one-fourth of a per cent tax on the employer on the first $3,000 of the employee's earnings. New Jersey also provides that, as to private plans, the employee pays up to one-half a per cent of the first $3,000 of his earnings to maintain the plan, with the balance of costs to be provided by the employer. New York provides that the employee must pay one-half a per cent of his first sixty dollars of weekly earnings, with the balance of the cost to be borne by the employer. In Rhode Island the employee is taxed one percent up to $3,600 and

under the federal act for railroad employees there is a variable rate of tax imposed upon the employer, depending upon the size of the fund, which ranges from one-half a per cent to three per cent of wages up to $350 a month, which tax also finances unemployment insurance.

The programs in California, New Jersey and Rhode Island are administered by the unemployment insurance authorities, while in New-York it is administered by the Workmen's Compensation Board. The railroad program is also administered by the same authorities who are charged with the administration of unemployment compensation.

In the matter of coverage, the California law provides for participation of employers with one or more employees and a payroll of $100 or more in any quarter. New Jersey covers employers with four or more employees, as does New York, whereas the coverage in Rhode Island is of employers with one or more employees. In California, New Jersey and Rhode Island, the coverage is the same as in unemployment compensation.

In the matter of weekly benefits and maximum duration, the weekly benefits are from ten dollars to fifty dollars in California, with a maximum duration period of twenty-six weeks plus hospital benefits of twelve dollars a day for twenty days in any one disability period. The New Jersey benefits run between ten dollars to thirty-five dollars, with a maximum in a twelve month period being the lesser of twenty-six weeks of benefits or three quarters of earnings in a total base period. New York provides for a minimum of twenty dollars or the average weekly wage, whichever is less, and a maximum of forty-five dollars per week, with a maximum duration period of twenty-six weeks. In Rhode Island, the benefits run between ten dollars and thirty dollars, with a twenty-six week maximum duration period. The railroad law provides benefits between thirty-five dollars to eighty-five dollars during a two week period, with a maximum duration period of twenty-six weeks. In all the plans there is a waiting period of one week.

Pregnancy benefits are paid in Rhode Island but not in New Jersey. California and New York permit benefits for disability after the termination of pregnancy. The federal act provides for special maternity benefits beginning fifty-seven days before the expected date of child birth and ending 115 days later.

It is our opinion that the railroad workers and the workers of California, New Jersey, New York and Rhode Island deserve the protection of temporary disability insurance. Needs of Ohio workers for this type of insurance are as pressing. We trust that in the future the recommendations of the Disability Unemployment Insurance Commission made in 1951 will be heeded.