

---

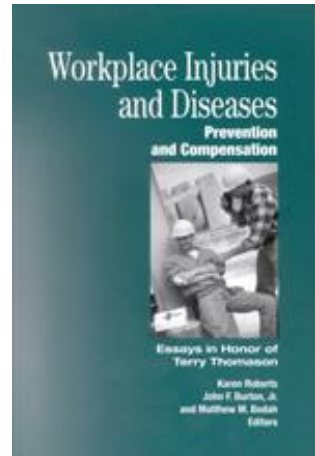
Upjohn Institute Press

---

# Workers' Compensation in Rhode Island: Reform Through Business/Labor Cooperation

Matthew Carey

*Rhode Island Department of Labor and Training*



Chapter 11 (pp. 275-284) in:

**Workplace Injuries and Diseases: Prevention and Compensation:  
Essays in Honor of Terry Thomason**

Karen Roberts, John f. Burton, Jr., and Matthew M. Bodah, eds.

Kalamazoo, MI: W.E. Upjohn Institute for Employment Research, 2005

DOI: 10.17848/9781429454919.ch11

# 11

## Workers' Compensation in Rhode Island

### Reform through Business/Labor Cooperation

Matthew Carey

*Rhode Island Department of Labor and Training*

A major legislative overhaul of the Rhode Island workers' compensation system took place between 1990 and 1992. However, it is important to note that prior efforts laid the groundwork for this successful reform. Continually, throughout the 1970s and 1980s both labor and management tried, usually separately, to fix a system that was serving neither well. Despite attempts at reform, premiums continued to rise while claims' administration worsened. Injured workers were not receiving timely benefits, and little effort was put into getting people back to work. Further, the adjudication processes of the Workers' Compensation Commission were terribly inefficient, with cases often taking years to be settled.

In 1985, the legislature made a major attempt at reform. The Department of Workers' Compensation was created, and an informal hearing process—with the goal of quick dispute settlements—was established. An employer or injured worker could request a hearing, which was statutorily required to be held within 14 days. At the end of a 30-minute hearing, the parties were supposed to have received a determination as to whether benefits were granted, denied, terminated, or continued. Either party could appeal the determination to the commission, which would hear the case *de novo*. Under this system, representation by attorneys was not required during the hearing at the department. Instead, the legislation created positions for “employee assistants” who helped injured workers through the process by answering questions, helping workers assemble evidence, etc. Insurers were required to accept or

deny a claim within 45 days under a “memorandum of payment” or “notice of controversy.”

Unfortunately, soon after it was established, the system began to bog down. Separate hearings were required for matters such as the determination of wages, and occasionally hearings would have to be continued because of incomplete medical information. The 14-day requirement was, by necessity, ignored, and stretched first to 21 days, then 30 days and beyond.

A further flaw in the system was the role played by the employee assistants. The Rhode Island Bar Association brought a successful action against the department claiming the illegal practice of law by the employee assistants. In response, the department curtailed the assistants’ duties, opening the door for greater attorney involvement.

Within a couple of years, the system broke down completely. Virtually every decision of the department was appealed to the commission for a *de novo* hearing. The losing parties always wanted “another bite at the apple,” plus there was a strong financial incentive for attorneys to appeal: their allowable fee was higher at the commission than at the department level. Hence, some attorneys appealed even successful cases—citing one or another technicality—to take advantage of this perverse incentive.

It is significant that the 1986 reform had the support of business and insurance interests but lacked labor’s backing. Further, the legislation did little or nothing to coordinate the work of the department of Workers’ Compensation and the Workers’ Compensation Commission.

By the late 1980s, insurers were requesting double- and even triple-digit premium rate increases. A 32 percent increase was approved by the Rhode Island Department of Business Regulation, and a further 123 percent increase was sought by the National Council on Compensation Insurance, but was denied. The latter move resulted in an open protest by employers at the state capitol. In 1990, the informal hearing process—the centerpiece of the 1986 reforms—was scrapped.

However, in 1989, the business and labor communities had come together to discuss the severe problems with the system. That reform effort, which thus far has proven very successful, led to major legislative actions in 1990 and 1992, and some more minor reforms since. Although a number of labor, business, and government leaders deserve credit for the reforms, George Nee, Secretary-Treasurer of the RI AFL-CIO, and

Sheldon Sollosy, the (now-retired) owner of the Rhode Island division of Manpower, Inc., were the principal negotiators of the reforms. The extraordinary trust and cooperation between labor and business set the tone for the further involvement of the legal and medical communities, and, in turn, the support of the legislative and executive branches.

## **THE 1990 REFORMS**

### **The Workers' Compensation Court**

Prior to 1990, the Workers' Compensation Commission was the principal adjudicator of workers' compensation disputes. The 1990 legislation elevated the status of the commission to that of a court with bona fide judicial appointments. With the elimination of the informal hearing process, the court became the initial forum for resolving disputes. Judges are required by statute to hold a pretrial hearing within 21 days of request. While the parties may still request a trial, the case remains with the judge who rendered the pretrial decision. As a result, consistency has been brought to decisions, and appeals have been reduced. Under the leadership of Chief Judge Robert Arrigan, who recently retired from the bench, the pretrial conference proved to be a highly effective means of resolving disputes and avoiding costly litigation. The court has become a model of efficiency and a key ingredient in the system's success.

### **Changes in Administration**

With the 1990 reforms, insurers are allowed to file "nonprejudicial agreements," which allow claims to be paid for up to 13 weeks with no acceptance of liability by the insurer. Hence, the injured worker receives a benefit immediately while the case is investigated. If the insurer determines that it is not liable, the worker receives notice and has two years to file a petition to establish liability. Alternatively, the insurer may voluntarily accept liability by filing a memorandum of agreement. As well, the 1990 legislation allows for a "deny and dismiss settlement," which the parties can submit to the court. If accepted, the matter

is considered a “compromised payment” and the insurer is freed from further liability.

### **Controls on Fraud**

Despite the high levels of trust and cooperation, employee fraud proved a contentious issue for labor and business negotiators. Nonetheless, the parties agreed that workers who misrepresent injuries or fail to report income should not benefit from the system. Therefore, insurers are allowed to request periodic reports of income from injured workers and to recover money from overpayments. Further, workers’ compensation fraud was made a felony. However, the harassment of injured workers or a delay in the payment of benefits carry financial penalties for insurers.

### **Changes in Benefits**

The 1990 reform package included major changes in partial disability benefits. Both the amount an individual may collect and the length of time that benefits may be received were changed. For injuries occurring after the effective date of the legislation, the insurer may reduce benefits to 70 percent of the weekly benefit paid once a worker has achieved “maximum medical improvement.” However, a reduction is not allowed if a worker can demonstrate a good faith, but unsuccessful, effort at obtaining work. The length of time that partial benefits may be collected was limited by the legislation to 312 weeks. However, this limit may be extended if the individual can establish that the injury or illness continues to pose a material hindrance to obtaining work. For collection beyond the 312 weeks, annual cost-of-living adjustments are required.

### **The Creation of a State Fund**

By the late 1980s—and owing to the difficulties in the system—90 percent of Rhode Island employers were in a residual risk pool. The leaders of the reform effort determined, therefore, that the creation of a state fund to be the insurer of last resort would allow for greater local control over premium rates. Legislation created a private, domes-

tic, mutual insurance company with a \$5 million government loan. The company is now called Beacon Mutual and is the state's largest workers' compensation insurer. The loan was repaid and the company now functions completely independent of state government.

### **The Creation of an Advisory Council**

Another key element of the success of the 1990 reform effort was the creation of an 11-member advisory council comprised of representatives of the state legislature, the executive branch, the Workers' Compensation Court, business, labor, and the general public. The council is required to make quarterly reports designed to identify and possibly head off small problems before they can grow. The creation of the advisory council was, in a sense, an attempt to codify and formalize the cooperative relationships that were formed at the time of the reform effort. The council has been very successful and has served as forum where problems, ideas, and legislative proposals can be discussed and analyzed in a nonpartisan and rational manner. The result is that solutions reflect the desires of all of the stakeholders rather than simply those with the most political power.

## **THE 1992 REFORMS**

Evidence of the success of the advisory council and the cooperative approach came with the 1992 reforms. A legislative package was presented that built upon the measures taken in 1990. Today, many view the 1992 reforms as the final touches that truly turned the system around.

### **Medical Reforms**

Mirroring the advisory council itself, an 11-member medical advisory board was established. The duties of the board include advising the chief judge of the court of medical protocols for the treatment of compensable illness and injuries, preparing standards to guide the court's consideration of medical evidence (particularly standards to determine the extent of an injury or illness and the achievement of maximum medical improvement), and reviewing and approving the Preferred Provider

Network lists submitted by insurers and self-insured employers. The medical advisory board may also disqualify or suspend a medical provider for certain legislated infractions.

### **Employee Choice and Preferred Provider Networks**

Under the 1992 legislation, injured workers are allowed to choose their primary medical provider. However, if the worker wishes to change physicians he or she must select a physician from the network list or obtain prior approval from the insurer. The purpose of the reform was to reduce “doctor shopping” by individuals intent on finding a favorable medical opinion.

### **Fee Schedules**

The legislation mandated that the Department of Labor and Training in consultation with the court develop a workers’ compensation medical fee schedule. Prior attempts to set schedules had failed, since physician reimbursement rates were set at Medicaid levels, which were considered too low by doctors. This led to good doctors leaving the system or challenging the fees in court. In consultation with the medical advisory board, fees were set that were generous when compared to other states, but were designed to keep highly regarded physicians on board. The success of the effort again showed the benefits of cooperative decision making, which took into account the needs of important stakeholders—in this case, the medical community.

### **Benefits**

The 1992 legislation recognized that workers’ compensation benefits should, in most cases, be a temporary replacement of income, but not at levels that would provide a rational disincentive to return to work. Hence, weekly compensation was set at 75 percent of average weekly spendable base earnings (or after-tax income excluding overtime). Earlier, the benefit rate was 66.66 percent of gross earning including overtime. An offset was established for retirement income, so that employees would not receive both full workers’ compensation and retirement benefits. The offset can take place for injuries received or

illnesses occurring less than five years before retirement or after age 55. However, if the problem occurs less than two years before retirement, indemnity benefits are due.

The 1992 legislation adopted a chart, based on the American Medical Association's (AMA's) *Guides to the Value of Permanent Impairment*, to reduce partial benefits upon maximum medical improvement. This reduction was in addition to the ability to reduce benefits 70 percent per the 1990 legislation. The 1992 statute also defined *material hindrance* as a greater than 65 percent degree of functional impairment per the AMA *Guides*. Therefore, a partially incapacitated employee could not collect benefits past 312 weeks unless the disability surpassed the 65 percent degree of functional impairment.

Not all benefits were reduced by the legislation. For example, dependency benefits for totally disabled workers were actually increased, and a cost-of-living adjustment for individuals totally disabled for at least 52 weeks was also added.

### **Reinstatement**

The 1992 legislation gave an injured worker the right to be reinstated to his or her former position with reasonable accommodation by the employer within a year of injury (or 18 months of injury if the worker had spent time in an approved rehabilitation program). This right applies only to workers injured after May 18, 1992, only to firms with 10 or more workers, and not to seasonal or temporary workers. However, the reinstatement right is significant and is another example of a compromise between labor and business. The right is a clear victory for injured workers, but it also provides an incentive to return to work before exhausting benefits.

### **MORE RECENT REFORMS**

The cooperative system of reform, which began in the late 1980s, remains intact today, and in fact many of the same individuals are involved. Sheldon Sollosy is now the chairman of the board of Beacon Mutual, and George Nee chairs the Workers Compensation Advisory Council. Since 1992, all legislative proposals have been referred by the



house and senate labor committees for consideration by the council. While there have been no large-scale changes since 1992, a number of smaller modifications have been made.

### **Material Hindrance**

Enforcement of the 1992 statute's definition of material hindrance has been postponed several times. Labor prefers that the determination be left to a judge rather than be based on the automatic application of an arbitrary figure. Thus far, business and insurers have agreed to the postponement, and, in exchange, labor has not sought a total repeal of the definition.

### **The Workers' Compensation Administration Fund**

Prior to the 1992 reforms, assessments on insurers to support the Workers' Compensation Administration Fund were based on educated guesses about prospective gross premium levels. This resulted in surpluses in the fund, which were raided on a couple of occasions by the Department of Administration and the legislature to fill gaps in the state budget. This was clearly not what the fund was intended for, and was in a sense an additional tax on insurers. In 1998, the council and the court supported legislation to move the date of assessment to a time when the gross premium figure was known. This has allowed for a more accurate assessment and has prevented funds from being used for purposes other than funding the workers' compensation systems.

### **Adjustments to Fee Schedules**

Since 1992, the collaborative model has been extended with the establishment of a fee schedule task force composed of representatives of the Department of Labor and Training, the Medical Advisory Board, and medical and insurance communities. A couple of amendments to the fee schedule have been made, but only after a consensus has been reached by the task force. In 1998, the task force agreed to the reduction of several fees, but also to a general annual escalation of fees based on the consumer price index.

## **Employer Compliance**

The collaborative model was also used to address employer compliance issues that came to light after the tragic fire at the Station nightclub in Rhode Island in February 2003. One hundred people, including a number of club employees, died and many were injured. After the fire, it was discovered that the club lacked workers' compensation insurance. Department of Labor and Training officials, along with business, labor, and insurance industry representatives, revisited the statute and methods to ensure compliance, including sanctions against delinquent employers. The legislature approved a package to increase fines and penalties, move serious case hearings from the department to the court, and allow for the closing of businesses that do not secure insurance promptly. These measures have proven extremely successful in increasing the rate of compliance.

## **CONCLUSIONS**

By almost any measure, the reforms that began in 1990 have proven successful. By way of illustration, let us consider the achievements of the court, the number of self-insured employers, and trend in insurance premium rates.

### **The Court**

Unlike the former informal hearing process, the court's pretrial hearing program continues to be successful. Nearly all cases receive a hearing within 21 days and are disposed of promptly. Although credit for much of the early success rightly belongs to Chief Judge Robert F. Arrigan, his replacement, Chief Judge George Healy, has a great deal of experience both as an insurance company advocate and jurist, and is equally committed to the success of the program.

### **Self-Insured Employers**

In the early 1990s, before the reforms began to take effect, there were 185 certified, self-insured employers in Rhode Island. Most were

self-insured because they could not afford the high premium rates at the time, even though, in general, they had low loss rates. Today, there are only 47 self-insured employers in the state. Since 1991, only two employers have applied for self-insurance certification, and both are affiliated with firms that have national self-insurance programs.

### **Premium Rates**

Beacon Mutual, which, as mentioned earlier, is today the largest workers' compensation insurer in the state, has proven that it can, under the current system, operate profitably without the large premium increases sought by companies in the late 1980s and early 1990s. In fact, Beacon Mutual has many discount programs for employers and has decreased rates three times since 1994.

In short, the collaborative efforts at workers' compensation reform have proven very successful in Rhode Island. The system now provides adequate and timely benefits for injured workers, reasonable premium rates for employers, fair reimbursements for physicians, and a reasonable rate of return for insurance companies. The essential ingredient in all of this success was the ability of business and labor to come together, work out their problems cooperatively, and then spread the same spirit of goodwill and common endeavor to other essential stakeholders.

**Workplace Injuries  
and Diseases**  
**Prevention and Compensation**

*Essays in Honor of Terry Thomason*

Karen Roberts  
John F. Burton Jr.  
Matthew M. Bodah  
*Editors*

2005

W.E. Upjohn Institute for Employment Research  
Kalamazoo, Michigan

## Library of Congress Cataloging-in-Publication Data

Workplace injuries and diseases: prevention and compensation essays in honor of Terry Thomason / Karen Roberts, John F. Burton Jr., Matthew M. Bodah, editors.

p. cm.

Papers from a conference entitled "Workers' Compensation: Current and Emerging Issues" held at the University of Rhode Island on March 27, 2004 to honor the former director of URI's Schmidt Labor Research Center.

Includes bibliographical references and index.

ISBN-13: 978-0-88099-324-1 (pbk. : alk. paper)

ISBN-10: 0-88099-324-3 (pbk. : alk. paper)

1. Workers' compensation—United States—Congresses. 2. Insurance, Employers' liability—United States—Congresses. 3. Employers' liability—United States—Congresses. 4. Industrial safety—United States—Costs—Congresses. 5. Industrial hygiene—United States—Costs—Congresses. I. Roberts, Karen, 1949- II. Burton, John F. III. Bodah, Matthew M. (Matthew Michael) IV. Thomason, Terry.

HD7103.65.U6W685 2005

363.11'6'0973—dc22

2005009746

© 2005

W.E. Upjohn Institute for Employment Research  
300 S. Westnedge Avenue  
Kalamazoo, Michigan 49007-4686

The facts presented in this study and the observations and viewpoints expressed are the sole responsibility of the authors. They do not necessarily represent positions of the W.E. Upjohn Institute for Employment Research.

Cover design by Alcorn Publication Design.

Index prepared by Diane Worden.

Printed in the United States of America.

Printed on recycled paper.