“Unemployment Insurance,” “Workers’ Compensation” and
“The OSH Act”

by

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Unemployment Insurance

Prepared for *The History of US Economic Policy*
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UNEMPLOYMENT INSURANCE (UI)

The federal-state income replacement program for temporarily unemployed workers.

Relative to similar programs in Western Europe, unemployment insurance in the United States is decentralized, experience-rated and provides shorter term benefits, all of which reflect the program's origins in Titles III and IX of the Social Security Act of 1935.

It is decentralized because the Roosevelt administration, concerned that the Supreme Court would find a national program unconstitutional, was committed to "unemployment and old-age insurance under State laws." To this end, the Act established a tax-offset mechanism, the details of which are sometimes attributed to Justice Louis Brandeis: the federal government imposed a three percent tax on wages, with a promise to refund 90 percent of the revenues to states that enacted UI programs, subject to minimal guidelines. By 1937, every state had done so.

One of the requirements was that premiums be experience-rated in the sense that firms would be penalized, in the form of a higher tax rate, for benefits paid to their own workers, with states free to set both the minimum and maximum tax rates. The rationale, then and now, is that seasonal businesses would have an incentive to smooth production, and that firms with low turnover rates should not be required to subsidize firms with higher rates. This is distinct from UI's more important stabilization function, to limit fluctuations in aggregate demand.

The decentralization of UI has meant that even now, there are wide variations in benefits and the structure of premiums across states. Over the first quarter of 2001, for example, the average weekly benefit amount (AWBA) varied from $160.51 in Mississippi to $314.28 in Massachusetts. Measured as a share of wages in "covered employment," it varied from 22.8 percent in California to 44.4 percent in Iowa. Over the United States as a whole, however, the ratio of benefits to covered wages has remained constant over long periods. The degree of experience-rating is more difficult to measure, but Hawaii, for example, has less than most, and New York more.

Two other historical trends should be noted. First, the percentage of workers covered under UI has increased over time, from less than 60 percent to more than 90 percent, as state laws were expanded to include workers in the public and non-profit sectors, as well as those at small establishments. Second, the fraction of insured unemployment, the percentage of unemployed workers who collect UI benefits, has declined over time, with substantial reductions in the mid-1960s and first half of the 1980s. Labor economists have attributed the first of these reductions to demographic changes, and the second to a decline in the take-up rate: for a number of reasons, both economic and political, fewer eligible workers now submit UI claims.

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WORKERS' COMPENSATION (WC)

The state programs that provide cash and/or medical services to workers who are injured on the job or, in cases of workplace fatalities, survivor benefits.

Workers' compensation is one of the most important, and durable, contributions of the Progressive Era: in the short time between 1910 and 1921, all but four states – Arkansas, Florida, Mississippi and South Carolina – established programs. These were the first form of social insurance in the United States and, as such, the forerunner of such New Deal initiatives as old-age pensions and unemployment insurance. Throughout the 19th century, disabled workers were required to prove strict negligence under the common law of industrial accidents, which afforded employers three defenses – contributory negligence, the negligence of fellow servants, and assumption-at-risk. Workers often found the costs of a protracted court case prohibitive, however, and under these rules, positive verdicts or settlements were difficult to achieve. In some states, for example, fewer than half the families of men and women killed on the job received compensation. The problem was underscored in several well-documented catastrophes: following the infamous Triangle Shirtwaist fire on 26 March 1911, for example, in which 146 workers died, the owners settled a small number of civil cases, but were acquitted in the criminal case. The dramatic rise in the accident rate over the previous decades further served to galvanize the reform movement: the rate of nonfatal accidents for railroad workers, for example, had more than doubled between 1894 and 1910.

All 50 states, as well as the District of Columbia, Puerto Rico and the Virgin Islands, now have workers' compensation laws based on the principle of no fault liability. (There are also two national programs, for federal government workers and longshoremen and harbor workers.) In all but New Jersey and Texas, where participation is elective, eligible employers must purchase sufficient insurance to provide mandated benefits, though most allow self-insurance, either alone or in small groups. Public and private insurance funds coexist in 21 jurisdictions and in 8, there is an exclusive state carrier. In most cases, premiums are both class-rated and experience-rated.

It is the decentralization of workers' compensation in the United States that explains its most distinctive, and sometimes problematic, feature, the wide variation in plans. There are differences in access to care, coverage of agricultural workers, treatment of small firms and, most important, the size and duration of benefits, even within a single region. In 2001, for example, a worker who lost his or her hand in an industrial accident in New England was entitled to $21,690 in Rhode Island but $138,250 in Vermont. There is similar variation in the maximum survivor benefit: over all states, it varied from $223 per week in Idaho to $1031 in Iowa.

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The Occupational Safety and Health Act of 1970

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OCCUPATIONAL SAFETY AND HEALTH (OSH) ACT OF 1970

Also known as the Williams-Steiger Act, intended "to assure safe and healthful working conditions for working men and women."

The OSH Act established three permanent federal agencies: the Occupational Safety and Health Administration (OSHA), to set and enforce standards, the National Institute for Occupational Safety and Health, to conduct research on workplace hazards, and the Occupational Safety and Health Review Commission (OSHRC), to adjudicate enforcement challenges.

The historical roots of the OSH Act are found in the factory inspection laws that were passed in a handful states in the last quarter of the 19th century. The first of these, enacted in Massachusetts in 1871, mandated the use of guards on machine belts, gears and shafts and the construction of adequate fire exits, and provided for public inspectors.

A broader, but still limited, commitment to workplace standards would later be enshrined in New Deal legislation, as it became clear that the patchwork of local inspection laws and state-based workers' compensation programs established in the Progressive Era provided uneven and often inadequate protection. The Social Security Act of 1935 allowed the federal Public Health Service to underwrite state-based industrial health programs; the Walsh-Healey Public Contracts Act of 1936 enabled the Department of Labor to set standards for federal contract workers; and the Fair

Labor Standards Act of 1938 empowered the Department to bar minors from "dangerous occupations."

The eventual OSH Act reflects the turmoil of the 1960s. Willard Wirtz, the Secretary of Labor in the Johnson administration, compared American casualties in Vietnam and in the workplace and, in opening remarks before a 1968 Congressional hearing, claimed that three out of four new entrants into the labor force would suffer work-related injuries at some point in their lives. President Johnson himself would describe the increased rate, and seriousness, of these "casualties" as "the shame of a modern industrial nation": at the time he spoke, the annual number of deaths on the job had increased to 14,000, with another 2.2 million injured or made ill. The administration's own proposal, soon introduced as legislation, faced considerable opposition, in Congress and from business, and never reached a vote. Organized labor, on the other hand, would later oppose the Nixon administration's initial proposal. The bill that President Nixon signed into law on December 29th, 1970, was a compromise of sorts, between Senator Harrison Williams' (D-NJ) proposal, which was almost identical to the earlier Johnson plan, and Representative William Steiger's (R-NJ) more conservative one.

OSHA published its first standards, which included <u>permissible exposure limits</u> (PELs) for more than 400 toxins, in 1971. This list included the asbestos PEL that is still in effect, for example, as well as the benzene PEL that the Supreme Court voided in 1980. The 1978 PEL for cotton dust, which all but eliminated cases of "brown lung," is often considered one of OSHA's most important achievements. The 1978 and 1995 standards for lead, the 1991 standards for bloodborne pathogens, and the controversial ergonomics standards issued, despite Congressional opposition, in 2000, and repealed in 2001, are other well-known examples.

Other milestones include the defeat of the proposed OSHA Improvements Act in 1980, introduced by Senator Richard Schweiker (R-PA), which would have restricted OSHA's inspection powers; the 1986 $1.4 million fine imposed on Union Carbide for "egregious violations" at its plant in Institute, West Virginia, the first application of the "instance-by-instance" rule; IMC Fertlizer's $11.3 million fine in 1991, the largest ever imposed; and the Maine Top 2000 program initiated in 1993, a successful example of OSHA's current emphasis on compliance assistance in high-risk industries.

The OSH Act assumed that workplace regulation would be transferred to states over time, and provided for partial funding of state agencies that met federal guidelines. OSHA approved the first three state plans soon after the Act was passed and issued its first "final approvals," which relinquished federal enforcement powers, in 1984, but three decades after the Act was passed, there are just 24 comprehensive state plans. The largest state plan, CalOSHA, was dissolved in 1987.

Since 1971, the number of workplace fatalities has decreased 60 percent, and the rate of injuries and illnesses has fallen 40 percent. How much of this can be attributed to the OSH Act remains a matter of some debate, however. On one hand, OSHA has few inspectors and the penalties for individual violations are small: fewer than four thousand inspectors are responsible for almost six million eligible establishments and, despite the previous cumulative penalties, until 1990 the maximum fine for a "serious violation" was just $1000, after which it increased to $7000. On the other hand, there is empirical evidence that OSHA's current focus on high risk occupations and workplaces, its emphasis on compliance assistance and other forms of partnership, and its judicious use of VPPs or "voluntary protection programs" have been successful.

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