

Nebraska's Workmen's Compensation Law Analyzed

Omaha Experts on Liability Insurance Write Their Impressions of the Law and Its Provisions

By GUY H. CRAMER.

With the enactment of senate bill No. 1, the "workmen's compensation law of 1912," Nebraska becomes one of ten or a dozen states which will pass such a law at this session of the various legislatures. Adding this number to the fifteen states which already have a compensation law, it will be seen that more than half of the states of the union have recognized the necessity for a change from the old common law system based upon negligence of the employer.

The compensation law will apply to employers having five or more employees in their service, in all lines of business, except farmers, householders and railroads engaged in interstate commerce, the latter being exempted because of their being subject to federal legislation. The new law does not in any manner affect the legal liability of employers for work accidents where they have less than five employees. Such employers, however, and their workmen, may by agreement, operate under the joint compensation features of the law. When such an agreement has been entered into, both parties are bound to the same extent as though the employer was subject to the provisions of the act.



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The act is "elective" in its nature; that is, both employers and employees can operate under the compensation feature of the act, or under the common law. Both are presumed to be under the act in the absence of notice to the contrary. If he is under the act, the employer becomes liable for the payment of compensation benefits in accordance with the schedule shown in the law for all accidents received by workmen in the course of their employment, irrespective of whether negligence caused the accident. Should an employer, having five or more employees, "elect" not to come under the act, the injured workman is given the right to sue the employer, but the latter is deprived of the right to interpose any of the three common law defenses, viz., that the employee assumed the risk of his occupation, or that a fellow servant was responsible for the injury, or that the injured employee himself contributed to the negligence. In such cases, in order to recover in a damage suit, it will still be necessary for the employer to prove that negligence of the employer was responsible for the injury.

The dependents receive payments for 50 weeks, or practically seven years, by which time they should be able to adjust themselves to the loss of the bread winner. Where total disability for life results, the family not only has to earn its own support, but in addition has the burden of supporting the injured workman.

For partial disability, that is, cases where the injured employee is only able to work part of the time, or where his injuries are such as to reduce his earning power, even though he works full time, the benefit is 50 per cent of the difference between his regular wage and the amount received after the injury, subject to a maximum payment of \$10 per week. The payment for partial disability shall not continue for more than 300 weeks.

The committees of the senate and house have had the experience of similar laws in other states to guide them in their deliberations and they are to be congratulated upon having evolved a bill which will probably work out more satisfactorily than any other compensation law yet enacted.

The bill as finally passed has been designed all the way through to do away with damage suits, or the necessity for injured employees going into the courts to collect damages from their employer. In states having workmen's compensation laws in force less than one-half of 1 per cent of personal injury cases have ever gotten into the courts on any ground.

No claim or agreement for legal services shall be an enforceable lien against the amount to be paid as damages or compensation or be valid or binding in any other respect, unless the agreement be approved in writing by the judge of the district court. After such approval, where the employer's compensation is payable by the employer in periodic installments, the court is given the power to fix the proportion of each installment to be paid on account of legal services and disbursements.

The law provides that all amounts of compensation shall be payable periodically in accordance with the method of payment of the wages of the employee at the time of his injury or death. Lump sum settlements may be agreed upon between the interested parties, provision being made that such settlements for death and disability lasting over six months must have the approval of the district court.

No insurance carried by the injured em-

Workmen's Compensation Law

"Senate File No. 1" is the official designation of the workmen's compensation law passed by the late session of the Nebraska legislature, and which goes into effect on July 17, next. It was introduced by Senator Hoagland of Lincoln county. A digest of the bill follows:

The compensation law will apply to employers having five or more employees in their service, in all lines of business, except farmers, householders and railroads engaged in interstate commerce, the latter being exempted because of their being subject to federal legislation. The new law does not in any manner affect the legal liability of employers for work accidents where they have less than five employees. Such employees, however, and their workmen, may by agreement operate under the joint compensation features of the law. When such an agreement has been entered into, both parties are bound to the same extent as though the employer was subject to the provisions of the act. The act is "elective" in its nature; that is, both employers and employees can operate under the compensation feature of the act, or under the common law. Both are presumed to be under the act in the absence of notice to the contrary. Under the act the employer becomes liable for the payment of compensation benefits in accordance with the schedule shown in the law for all accidents received by workmen in the course of their employment, irrespective of whose negligence caused the accident. Should an employer, subject to the act, "elect" not to pay compensation, the injured workman is given the right to sue the employer, but the latter is deprived of the right to interpose any of the three common law defenses, viz., that the employee assumed the risk of his occupation, or that a fellow servant was responsible for the injury, or that the injured employee himself contributed to the negligence. In such cases, in order to recover in a damage suit, it will still be necessary for the em-

ployee to prove that negligence of the employer contributed to the injury. On the other hand, where an employer is willing to pay compensation benefits, he retains the present common law defenses in all damage suits brought against him by employees who have "elected" not to operate under the compensation feature.

In all cases of injury received in the course of employment the employer is obligated to furnish full medical aid and surgical and hospital treatment for the first three weeks after the accident not to exceed \$200 in amount. Where death results from the injury, the employer has to pay 50 per cent of the employee's regular weekly wage for not exceeding 350 weeks. This payment shall not exceed \$10 per week nor be less than \$5 a week (depending on the wages), making maximum payable for death of \$3,500 and a minimum payment of \$1,750. Specific dismemberments are compensated (subject to the same minimum and maximum payments per week of \$5 and \$10) as follows:

Loss of a hand, 50 per cent of wages for 175 weeks, or \$875 to \$1,750.

Arm, 50 per cent of wages for 215 weeks, or \$1,075 to \$2,150.

Foot, 50 per cent for 150 weeks, or \$750 to \$1,500.

Leg, 50 per cent for 215 weeks, or \$1,075 to \$2,150.

Eye, 50 per cent for 125 weeks, or \$625 to \$1,250.

The loss of both hands or both arms, or both feet, or both legs, or both eyes, shall constitute total disability. For total disability the compensation has been fixed on an especially liberal basis. In such cases the injured employee receives 50 per cent of wages (maximum \$10 and minimum \$5) for the first 300 weeks of disability, and thereafter, during the remainder of his life, 40 per cent of his regular wages, with a maximum payment per week of \$8 and a minimum payment of \$4.

personally, nor benefits derived from any other source whatever shall be considered in fixing the compensation to be paid by the employer. No agreement by an employee to waive his rights to compensation under the act shall be valid.

Employers are given the right to insure their liability to pay compensation in any liability insurance company which is licensed to write such risks in this state. No such policy shall be made unless it covers the entire liability of the employer under the new law. Heretofore, it has been the practice of liability insurance companies to limit their liability, usually to \$5,000 for injuries or death to one person and \$10,000 for injuries or death to more than one person resulting from one accident. Under the new law, this limitation will not be permissible.

The companies must assume the entire liability of the employer. Claims for compensation, without limit of amount, shall have the same preference against the assets of the employer as unpaid wages for labor.

The new law is believed to be as near ideal as it is possible to secure in present conditions in Nebraska. It meets with the approval of organized labor and the different associations of employers. The object and purpose of the law is to take care of 100 per cent of accidents and furnish compensation in virtually every case, instead of not more than 10 per cent as is the case under our present laws.

It is progressive legislation in the broadest sense and the workers of the state are to be congratulated upon its final enactment. The law becomes effective July 17, 1913.

minimum of \$4. There are smaller sums for partial disability. Provision is also made for "lump-sum" payments.

It will naturally be asked "How does the workman obtain his compensation if there is no commission or state official charged directly with the supervision of the enforcement of the law?" The answer is, primarily, by direct application to his employer; secondly, by arbitration; thirdly, by submitting his petition to a district court judge. The method of recovery, therefore, is both immediate and simple.

The cost of insurance to adequately protect the employer so that he may not have to assume the burden incident to workmen's compensation will, of course, have to be increased. The companies now writing employers' liability insurance did not count on paying every workman who was injured while employed by a concern which carried a liability insurance policy, for the risk then was the protection of the employer against merely his legal liability. Payments will now be made to a much larger number of injured workmen. No longer will excessive fees to lawyers be in order. The exact amount the workman must pay his attorney if the case goes into court (which should be

the exception) will be determined by the court itself.

As far as the insurance policy is concerned it will be much broader and more simple. In fact it will practically cover the cases which would ordinarily come up under the law and will be more in the nature of an accident policy with stipulated amounts for various accidents.

It has not been previously mentioned that the employer has the right to choose whether he will come under the law, but if he is amenable to it and takes no action to prevent its effect, he is covered by the law. In the event that he decides to remain out from under the law, he loses his three defenses in an action brought against him by an injured workman. His only safeguard, therefore, is to carry an employers' liability insurance policy which will be somewhat similar to the present method of insurance. In states where there are compensation laws it is said that courts and juries take as a precedent the compensation schedule in determining damages.

In summing up the whole proposition some employer has aptly said: "Under the new law a workman when injured practically continues as an employee and draws half pay, not over \$10 per week nor over \$5, after the first two weeks."

Result of People's Protest

By EDWIN T. SWOBE.

Compensation laws have resulted from a protest of the people against the law's delay in an action for damages of the employee against the employer, owing to the technicalities thrown around an action at law, and also because of the fact that the amount of damages awarded for specific injuries has varied so greatly in the amounts awarded that it has been necessary to relieve these conditions in order to do justice to both the employer and the employee. Not only was the employer unable to determine his solvency tomorrow or next week or next year, because of the possibilities of large damages being awarded an injured employee, but the employee was also in a position where, if damages were awarded, he was unable to realize immediately upon the sum due him without a compromise settlement or compelled to wait because of the law's delay and indefinite time for his money and then compelled to pay a contingent fee to his attorney anywhere from 25 to 50 per cent in addition to other costs of the action. This resulted in the employee really getting but a small amount of the damages awarded and the employer necessarily had to stand the added cost resulting from the suit. It has only been within recent years that this has been eliminated in some states by workmen's compensation laws and our state has just enacted a law at the last session of the legislature which enrolls us in the ranks of the progressive states along this line of legislation, consequently this law evolved from the desire of the people to do justice to both the employer and employee. Under the law the employer knows the specific amount he must pay to an injured employee or his dependents or he knows just what he must pay because of the death of an employee to his dependents.

The new compensation bill as passed by our legislature and approved by the governor, comprises most of the best features in the compensation laws as passed by other states. The most important features of the new law are: First, making it an optional matter with both the employer and the employee as to whether or not they will come under the law; second, assuming the employer's liability for less than five men from the provisions of the act; third, eliminating the state insurance feature, and, fourth, making the basis of compensation to be 50 per cent of the wages of the injured employee and the employee not contributing in any way to the sharing of the burden. Of course, if the employer does not carry insurance, and both he and the employee have elected to come under the act, the right of the employee to compensation depends absolutely upon the solvency of the employer, the contingency, however, of the employee losing his compensation because of insolvency of his employer will be very infrequent, swing to the fact



E. T. Swobe

act. Of course, our law was drafted from the laws as passed by other states and will be on trial during the two years intervening until the next legislature. The most optimistic supporters of the bill do not contend that the law is perfect, but believe and have convinced the most skeptical that the law is one which will give credit to the legislature which passed it and will make possible a thorough trial of the principles of workmen's compensation.

COUNTRY VERSUS CITY LIFE

Dweller in Country Given Odds for Long and Healthy Existence.

In the North Atlantic states in 1910 48 per cent of the people lived in small towns and country districts, comprising 90 per cent of the land, and 52 per cent lived in cities of 300,000 and over comprising the remaining area of 1 per cent. The lure of the great city, a theme saturated with tragedy, has been written of many times; Frederick L. Hoffman, actuary of the Prudential Life Insurance company, in a recent pamphlet, points out that longevity and diminished liability to disease are decidedly favored in the country. The typhoid fever mortality rate is higher in the country than in the city, but the difference is much less than has often been assumed. Although the mortality from malaria has been higher, and in many places no doubt still is so, mosquito elimination has greatly reduced the number of cases of malaria in rural districts. While influenza, diphtheria, apoplexy, paralysis, heart disease and peritonitis also seem more common in the country, some of these are diseases of old age, and the difference is undoubtedly due in great measure by reason of a larger proportion of old persons in the country, the young having migrated to the city. On the other hand, the causes of death more common in the city are venereal diseases, cancer, alcoholism, meningitis, enteritis, bronchitis, the pneumonia, tuberculosis, cirrhosis of the liver, appendicitis, Bright's disease and death from violence. It is hardly to be hoped, says The Journal of the American Medical association, that emphasis on the greater healthfulness of the country will influence any one who is determined to enter city life. No appeal of this or any other kind has hitherto proved effective in the history of civilization. But it is encouraging to the dweller in the country to know that his chances for long and healthy life are better than those of his brother in the city.

GREAT WESTERN ACCIDENT COMPANY'S LINE IS GREAT



H. O. WILHELM, Manager Great Western Accident Co.

H. O. Wilhelm is manager of the Great Western Accident association for the state of Nebraska, with offices in the Brandels theater building. The Great Western writes a workmen's compensation policy which protects employees no matter how they are hurt or whether they are injured while at work or elsewhere. This is different from most policies of this kind. Most all of them only protect the employee while at work and do not extend to cover them at home or going to and from work. It also writes a "Monthly Income" policy; paying \$5,000 accidental death, payable \$100 per month for five years. The Great Western has an arbitration option in all its policies so that in the event that a member is not satisfied with the settlement awarded him, he can have his claim adjusted by three disinterested parties living in his own community. Its slogan is "Keep the Great Western on Top" and it is doing so when it brings this kind of a workmen's compensation policy, a monthly income policy and an arbitration option into the accident insurance field. The Great Western, like many other accident insurance companies, helped a great many of the tornado sufferers out by paying their claims promptly.

BUNCH OF CENTURY RUNS

Some Modern Methuselahs Tell How They Stacked Up the Years.

James H. Lee of Lebanon, Kan., walked all the way to Denver to celebrate his 100th birthday with a sister who is 95. The old man (he does not object to the title), prides himself upon the fact that he has worked all his life, "used tobacco ninety-five years" and is as good a traveler as the next one.

Prigden Deasley of Bulloch County, Georgia, is a centenarian and one year over, although he has had only twenty-five real birthdays to his credit, having been born February 29, 1812. He lives on the same farm on which he was born. He was already beyond the age limit when the civil war began.

Abraham Wilcox of Fort Worth, Tex., has scored 112 years. His face is not deeply lined and he is far from feeble. His vision is clear. He has been a great walker all his life and he still walks two miles every day. He drinks a glass of beer every day and says it does him good, but he doesn't smoke. He gave up smoking thirty years ago when physicians told him it was killing him.

Almost Revolutionary

By HARRY S. BYRNE.

Although a change almost revolutionary in its effect has been made in the laws of Nebraska by the last legislature, as far as the relations between employers and their workmen are concerned, the average employer hardly seems to realize what it means to him.

Senate file No. 1, which was signed by the governor last Monday, establishes an entirely new condition of affairs in the field of labor, for instead of leaving the employer the choice of depending upon the mercy of his employer to pay him something in the form of compensation for an injury or of suing him, the law now steps in and under the guise of "Workmen's Compensation" provides for a definite sum to be paid the injured man, except in rare cases. The question as to the negligence of the employer or the employee is no longer the dominant feature.

The United States has been rather backward in the passage of laws compensating workmen for accidents received in the course of their employment. England, Germany and practically every other country of Europe have long since placed such humane laws upon their statute books.

Nebraska has no reason to feel ashamed of the part it has played in recognizing this progressive movement. While it is not to be expected that the present law will do away entirely with litigation over accidents to workmen, it can safely be asserted that a very good start has been made. Had the legislature passed a state insurance bill or compulsory measure, instead of an elective law, there might be some doubt as to its immediate effectiveness and practicability.

An arbitrary limit has been placed upon the number of employees in each instance who will be covered by the workmen's compensation law, but it is generally believed that this restriction will be removed by the next legislature.

The bill as passed eliminates railroad employees, domestic servants and farm laborers and there are other purely arbitrary exceptions which will later likely be modified, for it is generally considered and with justice that there should be no such discrimination. Reasons of expediency rather than of justice caused the law to be passed in this form.

When the average employer is told that if employing five or more men he must come under the workmen's compensation act or lose his three defenses, this may



HARRY S. BYRNE.

mean little to him unless he consults his attorney and looks the matter up for himself, but it can be safely asserted that when the employer can no longer plead that the accident resulted from the act of a fellow workman, that the injured employee had assumed the risk naturally growing out of his employment, or that the workman contributed to the accident by his negligence, he will have little ground to stand on in the way of preventing a judgment being rendered against him.

Briefly speaking, where death results from injury the employer must pay 50 per cent of the regular weekly wages for not more than 350 weeks to the dependents, the payment not to exceed \$10 per week nor be less than \$5 per week; liability in case of total disability is 50 per cent of the wages for 300 weeks and 40 per cent thereafter; the maximum in the first case to be \$10 and the minimum \$5 and later a maximum of \$8 and a

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Summary of Report Filed for the Year Ending December 31st, 1913.

INCOME		
Premiums	\$5,444,759.50	
All other sources	307,522.82	
Total	\$5,752,282.32	\$5,712,283.13
DEBIT		
Paid Policy Holders	\$1,772,626.85	
All Other Payments	5,286,424.52	
Total	\$7,059,051.37	\$6,958,068.67
ADMITTED ASSETS		
Unpaid Claims and Expenses	\$1,100,000.00	
Unearned Premiums	5,721,897.34	
All other Liabilities	252,973.67	\$4,174,870.19
Capital Stock Paid Up	2,000,000.00	
Surplus Beyond Capital Stock and Other Liabilities	1,165,877.01	\$3,165,877.01
Total	\$7,339,675.01	\$7,339,675.01

Witness my hand and the seal of the Auditor of Public Accounts the day and year first above written.
W. B. HOWARD, Auditor of Public Accounts
L. G. BRICE, Deputy.