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Workers' compensation system 'broken,' state chamber says



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Jim Delricco of Highwood has been fighting for worker's compensation for almost a decade. The Illinois senate is discussing worker's compensation reform to correct some of the problems that and others face.



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Adrienne McGill, owner of Adrienne Clarisse Intimate Boutique in downtown Libertyville, looks over a workers compensation insurance bill.

By Jamie Sotonoff

Camcraft, a Hanover Park manufacturing company with 300 employees, pays roughly \$200,000 a year for its mandatory workers' compensation insurance, money company executives would much rather spend hiring more employees or buying equipment, Vice President Jim O'Donnell said.

Even a small business like the Adrienne Clarisse Intimate Boutique in Libertyville, a 1,200-square-foot shop with just one part-time employee, pays about \$800 a year for workers' comp insurance.

"It's out of line," boutique owner Adrienne McGill said.

The two companies are part of a groundswell of complaints from businesses that premiums are too high for workers' comp insurance, meant to protect employees' income if they're hurt at work.

Yet, some workers who have been injured on the job also are outraged.

James Delricco of Highwood spent eight stressful years settling his workers' compensation case following an injury at work, forcing him at one point to go on food stamps to feed his family. The average case takes four years to settle, according to the Illinois Workers' Compensation Commission.

"It's a totally corrupt system, and it's a rotten, rotten system," Delricco said.

At the same time, workers comp abuse costs taxpayers millions of dollars. A recent downstate scandal involving the Illinois prison system has brought federal investigators into the picture. And the high insurance premiums are contributing to the growing cost of doing business in Illinois, prompting major employers like Caterpillar to consider moving out of state.

That's pushed reform to the front-burner in Springfield, but so far, the topic has been a political hot potato. It's pitting Republicans against Democrats and the interests of businesses and taxpayers against those of employee unions, insurance companies, medical providers and lawyers.

Workers' compensation is a complicated issue with many components, so most people don't understand the significant impact it has on their tax bills and their local and state economies, said Doug Whitley, president of the Illinois Chamber of Commerce.

Local taxing districts — including suburban school districts and municipalities — must pay for the expensive insurance, too, and it eats away at their withering budgets. The debt-ridden state of Illinois alone spends \$150 million a year on workers' compensation, Whitley said.

"As taxpayers, we all have a stake in this," Whitley said. "It has a trickle-down effect for every homeowner in Illinois."

Why it's so expensive

The purpose of workers' compensation is to provide employees with some sort of wage replacement in case they're injured on the job.

Illinois' businesses are required to have this insurance, but the rates are the third highest in the country, according to the Illinois Chamber of Commerce.

Three main factors contribute to this: generous insurance settlements, high maximum medical payouts, and an unclear definition of a work-related injury.

In some cases, unscrupulous lawyers, doctors and insurance companies have found ways to profit from it, which also drives up premiums.

"We have attorneys who have doctors on their speed dial," said state Sen. Kyle McCarter of Decatur, a member of the Senate Workers' Compensation Reform Committee.

At Camcraft, O'Donnell said there was a workers' compensation claim with \$340 in medical bills in it, yet the company's insurance carrier gave the employee a \$27,000 cash settlement.

Another Camcraft employee filed what O'Donnell considered to be a questionable workers' compensation claim for a soft tissue back injury and received a \$234,000 cash settlement from the insurance company, he said.

On the other hand, there are people like Delricco who are left to fight the system. After he injured his arm on the job while moving a piano in 2002, the insurance company challenged his claim and he ended up duking it out with them for years.

Delricco says he was the victim of what he calls “the starvation method” — where insurance companies drag out cases before the IWCC until an injured worker runs out of patience or money and is forced to settle.

“There's no excuse for people having to litigate for years and years and years ... but there's no incentive for them to hurry,” Delricco complained.

Delricco went through a dozen lawyers asking them to file a 19B-1 petition on his behalf, an emergency motion with statutorily set deadlines that require a case to be settled in 180 days. The lawyers refused, and told him “no one uses it,” Delricco said.

A recent IWCC report noted there has been “a clear shift” away from using 19B-1s, and IWCC attorney Darrell Widen confirms it's used “very sparingly” now but said he wasn't sure why.

“The whole process is broken”

State employees sometimes have an easier time with the system than someone like Delricco because the state rarely challenges the workers' compensation claims its employees make, Whitley said.

“The government does not act like a normal employer,” he said, noting that the state also has a very small workers' compensation fraud unit.

Earlier this year, an investigation by the Belleville News-Democrat showed \$10 million in workers' compensation claims were paid out to nearly 400 employees of the state-run Menard Correctional Center. More than 230 of the claims were filed by jail guards who said they had repetitive trauma damage to their wrists and elbows caused by locking and unlocking cell doors, the newspaper reported.

The last time lawmakers tried to tackle the issue was in 2005, when they set limits on payouts for various medical conditions. The problem was, the limits were so high, it didn't really help, said Gary Semmer, a workers' compensation attorney with Esser Hayes Insurance Group in Naperville. For example, Illinois' fee for a hand-wrist injury is set at \$17,180 — the highest level the U.S. The state with the next highest fee pays just \$10,338, according to Quinn's office.

Another factor keeping rates high is “the causation issue,” Semmer said.

“The current law says if it's *possible* that it was a work-related injury, then it's workers' compensation,” he said. “It creates this gray area, and it drives up workers' compensation litigation costs.”

Debate in Springfield

At least three plans for workers' compensation reform are now being circulated in Springfield. Only one of them, Senate Bill 1349, has come to a vote. It failed.

Democrats like state Sen. Emil Jones III of Chicago, who voted against the bill, said he wants to make sure workers benefits are protected.

Democrat state Rep. John Bradley of Marion proposed a bill to eliminate the workers' compensation system altogether, allowing the employee to appeal directly to the court system if an agreement couldn't be reached with an employer.

Gov. Patrick Quinn's plan aims to reduce the medical fee schedule by 30 percent, saving employers \$500 million, and streamline the system to help injured workers. His proposal has not yet been converted into legislation.

Republicans like state Sens. Kirk Dillard of Hinsdale and Kyle McCarter of Decatur, who supported Senate Bill 1349, say the system needs to be fair for both employers and employees.

"The only people who would be upset about (reform) are people who are gaming the system," McCarter said. "It's an injustice to employees because it's such a long, drawn-out process. The system they get trapped in is completely unfair."

In the meantime, Whitley says injured workers will continue "gaming" the system by filing workers' compensation claims rather than treating their injuries through their health insurance provider.

"(They say) if I can make it a workers' compensation claim, I can get two-thirds of my wages, not pay taxes on those wages, have no copays or deductibles, and I can be off work as long as my doctor tells me I can be off. I can shop for a doctor, and possibly get a cash settlement, too," Whitley said. "The whole process is broken."

The Associated Press contributed to this report.