



THE KEY TO A SUCCESSFUL EMPLOYMENT INJURY INSURANCE SYSTEM

ITCILO E-CAMPUS / ONLINE KNOWLEDGE

Module 2

A Comparison between Employer Liability and
Employment Injury Insurance Schemes



International Labour Organization



International Training Centre

Overview

This module addresses the main forms of organization of employment injury schemes, namely the Employer Liability (EL) system and the Employment Injury Insurance Schemes (EIIS). It presents the natural evolution of employment injury schemes through history as well as their current challenges.

The module then highlights the main concepts and the advantages of Employment Injury Insurances Schemes (EIIS) for the protection of workers, for the interests of employers and for social peace in general.

Learning Outcomes

By the end of Module 2, participants will:

- Acquire a basic understanding of the principle and issues underpinning the first generations of workers compensation schemes
- Have a brief summary of the current practices and challenges in the field of employment injury benefit schemes around the world
- Be familiar with key notions such as “No-fault (non-adversarial schemes)”, “Collective sharing of cost” and “Neutral/Tripartite governance”
- Acquire a basic understanding of how employment injury insurance scheme protects all stakeholders and contribute to social peace

Legend

If you find this icon , you are facing an **EXTERNAL** link

In order not to lose the current page, it can be useful to open a web page in a new tab. By default, the rule is that an external link (to another site) opens in a new tab, and an internal link (to another page on the site) opens in the same tab. But this is not always the case, and it is also sometimes useful to want to open several pages of the same site at the same time, in several tabs.

If you want to open a link in a new tab, **right click on the link and select “Open in new tab”**. You can also use the keyboard shortcut **“Ctrl”+left mouse click** on the link.

If you find one of these icons    , you are facing an **INTERNAL** link



left mouse click on the icon (link) to see more information.



left mouse click on the icon (link) to return to the original slide.



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Brief history of employment injury schemes

- Employment injury benefit schemes (EIS) are often the oldest branch of social security. These schemes were established to address one of the key challenges in modern workplaces
- Employers must ensure secure working conditions as it relates to occupational safety and health of their workers. When work-related injuries occur, employers are also responsible for ensuring fair, equitable and effective compensation of workers and access to medical care



First generation of schemes

- The first generation of such schemes was the “workmen’s compensation schemes”, under which the compensation of a worker or his/her surviving family dependents is a legal liability placed upon the employer
- Underpinning this approach is the principle that employers must provide their workers with a safe and healthy working environment, and that failure to do so renders them liable for the consequent losses suffered by workers or their family members
- Given that the financial burden of meeting this obligation rests solely on employers, these schemes often require them to take out private insurance
- Experience has shown, however, that even where such an obligation exists in law, the outcomes of these schemes are often sub-optimal. The need to process an insurance claim, involving the need to obtain relevant information and undergo rigorous medical assessments, can cause serious delays in obtaining treatment and benefits. In addition, an employer may be reluctant to make a claim for fear of other legal implications

Evolution of schemes

- In recognition of these drawbacks, many countries have replaced employer liability provisions with social insurance, which in effect extends the no-fault principle to share the costs of employment injury across society (or at least that part represented in the formal labour market) as a whole
- Some countries in Eastern and South-Eastern Asia, including Japan, Malaysia, Republic of Korea, Philippines and Thailand, have a long history of implementing and gradually expanding coverage in case of employment injury, while others, such as Cambodia and Lao People's Democratic Republic, have recently introduced EII schemes
- Some countries in Southern Asia, such as India and Pakistan, have provincial EII schemes in place, but the coverage is still limited given employment practices that often lead to under-reporting or lack of compliance in registering workers

Evolution of schemes

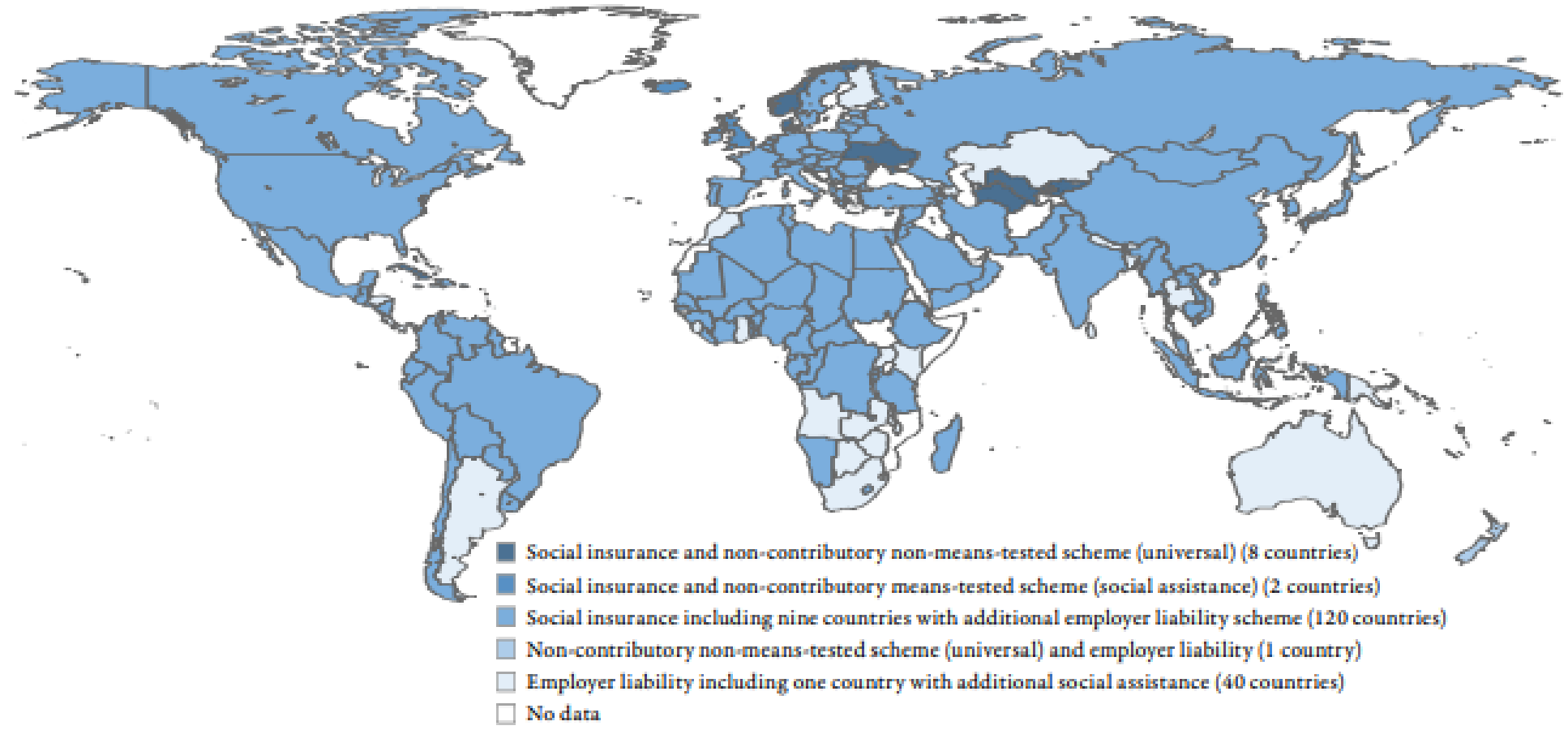
- In Africa, countries such as Ethiopia, Malawi and the United Republic of Tanzania have recently introduced EII schemes or are in the process of doing so. As such, a scheme is a solution to chronic problems of coverage and benefit inadequacy for injured workers or dependents of deceased workers (ILO, 2015b).
- A recent ILO study surveyed the practices observed in Southern African countries and pointed to the inherent deficiencies and the urgency of expanding employment injury protection (Mpedi and Nyenti, 2016). This is especially relevant in the extractive industries and agro-food sectors and in Africa in general, as its booming national developments rely on large construction and infrastructure projects where accidents are more frequent and severe
- This shift in approach to employment injury protection has been reflected in the standards adopted by the ILO from its early days (see module 5)

Today: three modalities for implementing employment injury protection schemes

- Employers' liability
- Social Insurance
- A mix of the two



Snapshot of worldwide situation on employment injury protection schemes



Notes: Figures in brackets refer to the number of countries in each category. In the eight countries that combine a universal type of scheme with social insurance, "universal" applies to medical care. For more specific notes, see Annex IV, table B.7.

Sources: ILO, World Social Protection Database; ISSA/SSA, Social Security Programs Throughout the World. See also Annex IV, table B.7.

Link : <http://www.social-protection.org/gimi/gess/RessourceDownload.action?ressource.ressourceld=54645>

Two modalities of employment injury protection

	Individual employer's liabilities		Social insurance
	Employer's direct compensations	Purchase of private insurance	
Liabilities	Individual employer		No fault
Permanent disability / survivors' benefits	Lump sum / limited duration		Periodic payment with indexation
Medical care	Limited duration		As long as needed
Rehabilitation	Not available		Available
Benefit delivery	Not guaranteed	Guaranteed / fast	
Prevention	Finance not available		Finance available
Finance	Individual	Collective	
Risk share	No	Limited	More
Employer's insolvency	Often	No	
Effective coverage	Poor	Limited to low- risk industries	Extensive

Basic principles of employment injury insurance

- **No-fault (non-adversarial schemes)**

Workers are paid benefits regardless of how the injury occurred. The worker and employer waive the right to sue. There is no argument over responsibility or liability for an injury.

- **Collective sharing of cost**

The total cost of the compensation system is shared by all employers. All employers contribute to a common fund.

- **Neutral governance**

Right to benefit established outside contractual relationship of worker/employer. Private or public carrier.



Basic aims of employment injury insurance

The aim of employment injury provisions in most countries is to meet the needs of workers who are incapacitated by injury at work or occupational disease, or of their dependent family members, by way of:

- income replacement, by way of periodic cash benefits, in case of disablement, which may be assessed as
 - temporary or permanent,
 - partial or total, and
- contingent benefits (periodic cash payments and funeral grants) payable to survivors (widow/er, children or other dependent relatives, as the case may be) in case of death.

In summary: advantages in favour of an autonomous national employment injury insurance scheme

Workers are better and more rapidly protected

- They can be entitled to benefits even if their employer does not meet its obligation
- In case of occupational disease they can be entitled to benefits even if they are no longer doing the job for which the disease is recognized
- They do not have to prove the responsibility of their employer
- Claims are usually treated quickly and compensation is received shortly after
- Benefits are permanent (in particular victims of severe injuries)
- In case of incapacity to resume work, physical rehabilitation services are accessible to be able to resume personal activities
- In case of impossibility to resume the job occupied at the time of the accident, but still with some earning capacity, vocational rehabilitation services are accessible to be able to work in a new job.

In summary: advantages in favour of an autonomous national employment injury insurance scheme

Workers are better and more rapidly protected

- If a worker becomes disabled, s/he receives:
 - Health care
 - Periodic payments replacing lost wages
 - Rehabilitation support to reintegrate work
- If a worker dies from an employment injury, his/her dependents receive:
 - Periodic payments replacing lost wages
- These benefits paid for a long period of time will be adjusted to take into account the increase in the cost of living, in accordance with ILO Conventions standards and are generally higher than those seen in EL schemes

In summary: advantages in favour of an autonomous national employment injury insurance scheme

For the Employers

- They are worry-free under a no-fault EII
- No catastrophic financial risk in case of an accident
- No time-consuming, complicated expensive court cases
- Workers appreciate less industrial disputes
- Relatively non-expensive (less than 1% to 2% of wages)

In summary: advantages in favour of an autonomous national employment injury insurance scheme

OSH prevention and labour inspection reinforced

- Better data
- Better prevention
- Cost saving
- Better awareness and practices

In summary: advantages in favour of an autonomous national employment injury insurance scheme

For the Government:

- Satisfied with the fact that less disputes mean less lawsuits and Court decisions
- Happy as it could contribute, in addition to the tripartite composition of the board, to a better social climate
- Less victims would still have, after the injury and its recovery, to live with no or few financial and medical resources

An illustration of how employment injury insurance scheme protects an employer from catastrophic cost of an accident

- ❑ For an Enterprise employing 1,000 employees
- ❑ An accident resulting in 100 younger dead workers and 100 younger totally disabled workers
- ❑ Compensating 60% of lost wages for life in case of accidents
- ❑ The catastrophic cost of compensation would amount to:
 - ⇒ 200 workers receiving 60% of their wages for up to 40 years in the future
 - ⇒ A total catastrophic cost equivalent to **4,800 times the average worker's annual salary**
 - ⇒ **A non-affordable situation forcing an employer into bankruptcy**
 - ⇒ **The solution: Each employer contributes to EII only around 1% of wages each year and does not worry about accidents.**

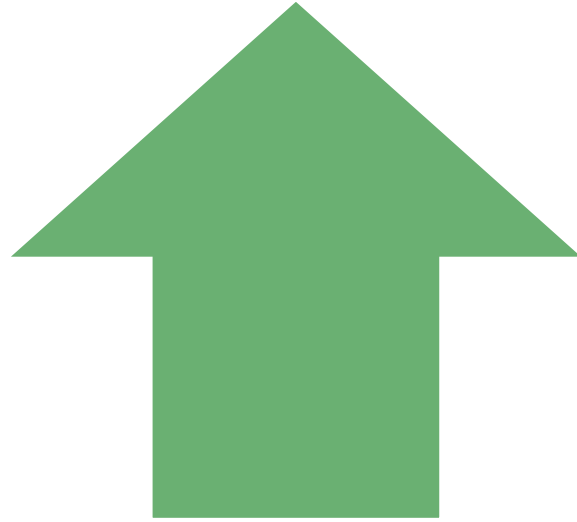
Other advantages of an EIS: its tripartite governing board

The tripartite composition of the governing board allows workers' and employers' organisations:

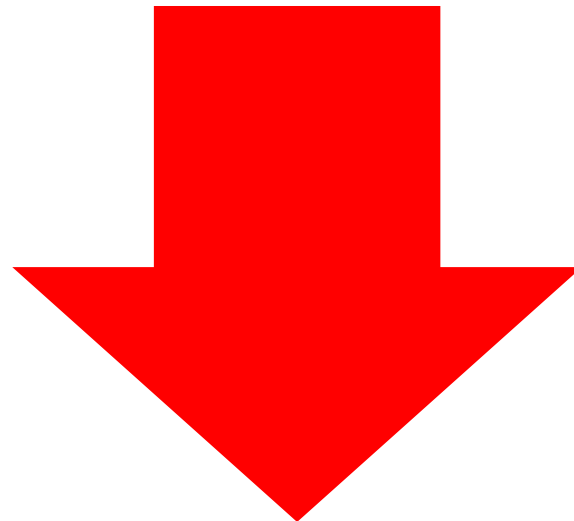
- To be involved in the adoption and the review of the policies regarding management, financing, claims processing, etc.
- To make sure that the administrative institution maintains a good financial record and remains efficient

For more detail, see Module 8

Is an EIS scheme more administratively costly than EL program?

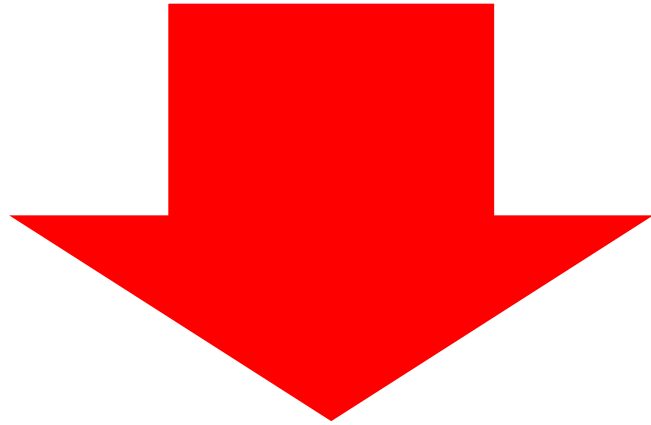


The government may consider that the creation of a new entity dedicated to the EIS could be too costly and that it could be difficult to find all the competent staff it needs



But even a better EL program requires the addition of specialized staff to ensure the compliance of the employers and the effectiveness of the insurance market

Is an EISS scheme more administratively costly than EL program?



EIIS scheme is compulsory
In an EIIS scheme, employers do not have the choice of their insurer and must contribute to the public institution as the EL program should also force them to purchase group insurance



In the EIIS scheme, they cannot be sued. They do not face excessive costs even if a major accident occurs



Is an EIS scheme more administratively costly than EL program?

- At first sight, the cost of public insurance appears to be higher, because benefits of the EIS scheme are higher.
- However, private insurers have additional specific expenses, like marketing and lawsuits, and want to make profits.
- Furthermore, private insurers do not offer a coverage that will include all risks and workers concerned
- It is therefore not clear which scheme is more costly in the end.

How can employer liability system coexist with social or private insurance system?

- In some countries, employer liability goes beyond their contribution to the compensation scheme
- A country can have a risk pooling mechanism either through social insurance or private insurance but EI legislation can put a maximum on the total amount of benefits covered
 - **Thailand:** Workmen's Compensation Fund pays up to 45,000 baht per incident of work injury or occupational disease.
This maximum can be increased to 300,000 baht in certain cases determined by the medical committee of the Office of Workmen's Compensation Fund.
If the total medical cost is beyond the maximum, employer is liable for the amount not covered by the EIS.
 - **Sri Lanka:** employer buys private insurance policy on a voluntary basis. Insurance company pays beneficiaries for their claims, but the compensation amount paid by the insurance can be smaller than that stipulated in Workmen's Compensation Act.

How can employer liability system coexist with social or private insurance system?

- The sole existence of a EIS does not exclude the existence of an employer liability system. Public insurance system often coexists with private insurances and employers' liability systems.
- In some countries, employees have access to both employer liability system (tort system) and the insurance system.
 - In this case, the tort system is usually limited to specific circumstances such as the existence of employer negligence in the cause of industrial accident or disease. Once compensation is provided through the tort system, the EI can generally reduce the level of benefits.
- In another approach, the employer liability system completes the insurance system. It is often the case when EI legislation puts a maximum on the total level of benefits.
 - In this case the tort system provides additional compensation which often equals to the level of damages minus the amount paid by the public system. In such a system, the employer might hedge using a private insurance even when a public scheme exists (ex: UK, South Korea)

How can employer liability system coexist with social or private insurance system?

For more information on specific countries click on:

 [USA](#)

 [Switzerland](#)

 [UK](#)

In countries where employees have access to both tort system and EIS, or have to choose between the two, employers can expect their liability to be beyond their obligation to EIS.

Additional Resources

Additional readings

-  [Employers' Liability and Workers' Compensation: England and Wales](#)
-  [Compensation liability models](#)
-  [Employers' Liability System - the Case of Workers' Compensation in the United States](#)
-  [Employment injury protection in Bangladesh](#)
-  [Monitoring of coexisting of public and private insurance providers: the case of Switzerland](#)

Training tools

-  [Workers Compensation Fund in Tanzania](#)
-  [Contemporary Challenges: Role of the Private Sector](#)



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✘ First generation of schemes

Furthermore, countries with the employer liability provisions enforced by each individual employer generally have difficulties in effectively covering all employees in accordance with the law, and many injured workers or dependents of deceased workers do not receive proper compensation in response to their needs. Workers in small and medium-sized enterprises are the most prone to injuries, given the more limited resources available for prevention and the frequently high staff turnover that discourages some employers from investing in the training in prevention for their workforce.



Snapshot of worldwide situation on employment injury protection schemes



[1/3]

Figure and stats come from the World Social Protection Report Data 2017-2019

The majority of countries adopt a social insurance approach to compensation for employment injuries and occupational diseases, although some countries retain some elements of an employer liability approach so that workers who are not compulsorily included in such schemes should be also compensated directly by employers. In very few countries, for example in the Netherlands, employment injury coverage is fully integrated into schemes providing coverage for non-work-related disabilities.

Close to 40 countries still depend on employer liability compensation in case of injuries at work and in the absence of EII systems, especially in Africa and Asia-Pacific.

The figure illustrates the patterns of coverage worldwide. It shows the emphasis on social insurance, as opposed to first-generation schemes operating under employer liability, is higher in Europe, Central Asia and the Arab States, and lower in the Americas, Africa, and Asia-Pacific.



Snapshot of worldwide situation on employment injury protection schemes



[2/3]

In Africa, employer liability provisions are still in place in some countries, such as Botswana, Gambia, Ghana, Kenya, Malawi, Morocco, Sierra Leone, South Africa, Swaziland and Uganda. However, some of these countries are making efforts to implement a social insurance mechanism to provide employment injury benefits. For example, the Government of Malawi is making efforts to replace the employer liability system of the Workmen's Compensation Act of 1946 by the Workers Compensation Act No. 7 of 2000, which provides for the establishment and administration of a Workers' Compensation Fund based on the principles of social insurance (ILO, 2017e). Kenya is attempting to reform its direct employer liability system into a social insurance system, including the development of a compensation fund (ILO, forthcoming c).



Snapshot of worldwide situation on employment injury protection schemes

In Asia-Pacific, an employer liability system is still in place in countries such as Bangladesh, Brunei Darussalam, Nepal and Sri Lanka. Industrial accidents such as the Rana Plaza building collapse in Bangladesh revealed the devastating consequences of not having in place a public employment injury insurance scheme. This is of utmost concern, as large accidents in recent years have often affected small and medium-sized enterprises that could not afford to pay large amounts of compensation under employer liability when workplace tragedies occurred. In Bangladesh, the exporting industries in the ready-made garment and textile sectors are most concerned to see a rapid change to avoid ever witnessing another Rana Plaza tragedy. In the meantime, the Government has set up a Central Fund funded from levies on export volumes that aims to provide different types of benefits and services on a discretionary basis, including, but not exclusively, one-off compensation in case of work injuries. It is applied to factory workers engaged in the export-oriented ready-made garment sector and aims to provide a limited solution until the national employment injury protection and rehabilitation scheme is in place. For workers in non-export garment factories and in all other economic sectors, the situation remains dire; day-to-day work accidents often translate into households at risk of poverty. There is clear competitive pressure coming from the limited profit margins in the export industries and national producers, who are keen to retain their low labour cost profile to increase the share of exports from Bangladesh at the international level. On June 1, 2015, the Government of Bangladesh adopted a National Social Security Strategy, whose key components include the establishment of a mandatory National Social Insurance Scheme (NSIS) based on the principle of employers and employees jointly paying contributions into a national insurance fund for work injury.



[3/3]



Basic aims of employment injury insurance

Many national employment injury schemes have a set of wider aims, such as the re-employment of injured or sick workers, and the promotion and maintenance of decent levels of safety and health in the workplace. These objectives can only be achieved effectively if there is a high level of policy integration, not only between the various branches of social security schemes, but also between those and policies relating to labour markets, labour inspection and occupational safety and health (OSH).



U.S.A.



[1/5]

The workers' compensation system in the United States is an employer liability system. It is made up of individual state programs and four federal programs of limited jurisdiction (two comprehensive workers' compensation programs and two programs that provide limited benefits to workers in selected industries with selected medical conditions). Each state, except Texas, has a mandatory workers' compensation system. There is no federal requirement for states to have workers' compensation systems and no minimum federal standards for state systems. Each program is different and operates under its own set of laws, regulations, and legal precedents, there are some common elements to these systems.



U.S.A.

Exclusive Remedy

Workers' compensation is the exclusive remedy available to workers and their families for damages related to covered injuries, illnesses, and deaths. They are not permitted to sue their employers to recover any costs (including costs not paid by workers' compensation or costs related to pain and suffering) or to seek punitive damages. They generally may sue third parties that may be responsible for their injuries, illnesses, or deaths. In such cases, the employer generally has a right of subrogation.

Exclusive remedy does not keep all cases out of the courts. Decisions of administrative bodies can be appealed to state courts. Some workers can allege that their injuries were caused by the employers' acts, or inactions, so grievous that they amount to intentional torts subject to litigation and exempt from workers' compensation. Workers' compensation does not cover railroad workers and crew members of ships who are thus entitled to use the tort system to recover damages from occupational injuries, illnesses, and deaths.



Workers' Compensation Insurance

Employers generally finance workers' compensation through the purchase of insurance. Insurance premiums are regulated by the states and generally affected by the risk involved in the specific types of jobs being insured and the experience rating of the employer. Four types of insurance arrangements are used in workers' compensation:

1. Insurance through an exclusive state fund

In the four states with exclusive state funds, employers may not purchase workers' compensation insurance from private insurers.

2. Insurance through a competitive state fund

In 18 states, the state funds operate in open markets with private insurers and employers may purchase insurance from either the state funds or private insurers.

3. Private insurance

In the majority of states, there are no state funds and workers' compensation is exclusively offered through private insurers. They are state regulated, which limit their ability to set premiums and establish the benefits required by statute. Private insurers are generally not required to provide insurance in all cases and high-risk employer can be unable to purchase coverage in a state. States either assign them to insurers based on the insurer's market share in the state or provide insurance through an assigned-risk pool managed by the state.

4. Self-Insurance

All but two states (North Dakota and Wyoming) allow employers with sufficient resources to self-insure for workers' compensation.



U.S.A.

The Workers' Compensation Market

In a truly open market, employers and insurers would be able to come to agreements on optimal levels of premiums, benefits, and other services, which is not the case for workers' compensation market. The benefits provided by insurers and the premiums charged by insurers are regulated by the states. This regulation may somewhat blunt the possible cost savings and efficiencies that could otherwise be gained, but it ensures that all workers receive benefits deemed appropriate and that no employer pays premiums deemed too high. The market is closed in the four states with exclusive state funds. Although monopolies are often associated with higher prices, state funds have the potential to offer cost savings over private insurers because of their nonprofit status with no advertising or customer acquisition costs.



Second Injury Funds (SIF)

It is a state-administered fund that pays the difference between the employers' responsibility for partial disability benefits and the actual costs of total disability benefits for cases involving workers who were partially disabled before working for the employer. By reducing these potential costs of hiring a worker with a pre-existing disability, the SIFs are intended to reduce discrimination against persons with disabilities in hiring and compensation.

During the period after World War II, each state with private workers' compensation insurance or self-insurance operated a SIF. Since then, 20 states have abolished their SIFs or significantly limited their coverage. Some have argued that SIFs are no longer necessary due to enactment of the Americans with Disabilities Act. In addition, it is argued that SIFs have not resulted in the intended increased employment of persons with disabilities, have accumulated large unfunded deficits, deviate from the principle that employers should be responsible for the costs of their own workers' injuries, and result in increased transaction costs and disputes.

Notes: Benefits and costs are those paid in the calendar year, regardless of when the injury occurred. Costs include cost of insurance, benefits paid before meeting an insurance deductible, and administrative costs associated with self-insurance. Sums may not add due to rounding.

Source: Christopher F. McLaren, Marjorie L. Baldwin, and Leslie I. Boden, Workers' Compensation Benefits, Costs, and Coverage-2016 Data, National Academy of Social Insurance, October 2018, p. 1, <https://www.nasi.org/research/2018/reportworkers%E2%80%99-compensation-benefits-costs-coverage-%E2%80%93-2016>

Source: Workers' Compensation: Overview and Issues. Updated September 6, 2019. Congressional Research Service. <https://crsreports.congress.gov/R44580>

Switzerland

In Switzerland, insurance is provided through

1. Swiss National Accident Insurance Fund (SUVA),
2. Authorized private insurance companies,
3. Public sickness and accident insurance funds,
4. Sickness funds subject to the federal law on health insurance.

The Loi fédérale sur l'assurance-accidents (LAA) prescribes the sectors of activity which employers must ensure with the SUVA. SUVA is a public autonomous body that mainly covers enterprises in the secondary sector, which comprises about 50 percent of all workers and 25 percent of employers. The employers whom the SUVA does not have the competence to insure must, in accordance with the present law, be assured against the accidents by the other entities listed above. There is a distinction between supervision of

- (1) the uniform application of the law (so-called law enforcement or application) and
- (2) of management and solvency (so-called institutional supervision).



Switzerland

Supervision of law enforcement is the responsibility of the Federal Office of Public Health (FOPH) for all insurance companies that offer insurance prescribed by the LAA, whether they are private insurers, the SUVA or public accident insurance funds. The FOPH must ensure under the institutional supervision that all insurers properly report the data used for the calculation of premium rates. LAA insurers are legally obliged to contribute to uniform statistics through the transmission of their data and through a financial participation. The concept and content of the LAA statistics are determined, if they are not already in the legal bases, by the Accident Insurance Statistics Coordination Group, composed of representatives of the insurers and chaired by SUVA. Statistics are compiled by the centralization service, led by SUVA.

Institutional supervision is the responsibility of the Swiss Financial Market Supervisory Authority (FINMA) when it comes to private insurers. The FOPH and FINMA must coordinate their activities. The SUVA is subject to the Federal Council for high level institutional supervision, which is exercised by the FOPH, while its direct institutional supervision is the responsibility of its board of directors. Public sickness accident insurance funds, for their part, are supervised by the communities that set them up. Sickness funds subject to the federal law on health insurance are subject to the FOPH both for the supervision of the law enforcement and for the institutional surveillance.



Switzerland



Supervision	SUVA	Private insurance companies	Public sickness and accident insurance funds	Sickness funds subject to the federal law on health insurance
Law enforcement	FOPH	FOPH	FOPH	FOPH
Management and solvency	FOPH and Board of Directors	FINMA	Groups that set them up	FOPH

Supervision of work accident and professional diseases insurance

FINMA's institutional supervision on private insurers focus on the themes of corporate governance, risk management, outsourcing, technical provisions and asset management. Insurers are subject to on-site inspections. Those themes do not include control on insurance premium calculation. FOPH monitors the solvency of the companies under its jurisdiction. Since the LAA requires that contribution rates must be established according to actuarial principles and that a database be fed by all insurers, FOPH also intervenes in the area of rate setting to ensure compliance with the law. Pricing control does not include rate approval but is limited to monitoring that premiums are actuarially determined and rely on a database of claims that is properly updated.



UK

Different types of EI benefits can be provided by different schemes. This type of coverage sometimes allows a worker to file a lawsuit in civil court if the employer was negligent. This configuration is found in the United Kingdom.

- There are two sources of disability income security available to a worker in the UK: the social security benefit system administered by the Department for Work and Pensions and the employers' liability insurance. Any worker who is injured or made ill due to occupational causes is entitled to claim benefits under the social security system and to receive health care services from the National Health Service. Statutory sick pay coverage is provided for a period up to 28 weeks. Beyond that duration of disability, incapacity benefit is covered under the Industrial Injuries Scheme administered by the Department of Work and Pensions.
- Employers' liability insurance is compulsory in the UK, enabling employers to meet the cost of employees' injuries or illnesses, whether they are due to occupational causes or not. Injuries or illnesses resulting from motor accidents that are work related are usually covered separately by motor insurance. State benefits do not involve establishment of fault. By contrast, employers' liability insurance requires the courts to establish the negligence of an employer. This is done through actual or threatened litigation. Employees in the UK who are injured or made ill due to occupational causes can sue their employer for compensation in civil courts

Source: Institute for Work & Health. Description of the organization of the occupational health and safety system and the delivery of prevention services. Canada. 2010