

Inadequacy of Workers' Compensation Benefits

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Three Hats



CWCL

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A non-partisan organization whose bylaws preclude taking political policy positions, composed of seasoned workers' compensation practitioners on both sides.



Law Professor

Workers' Comp is part of a remedial social program/no-fault liability system/disability management system.



Injured Worker's Lawyer

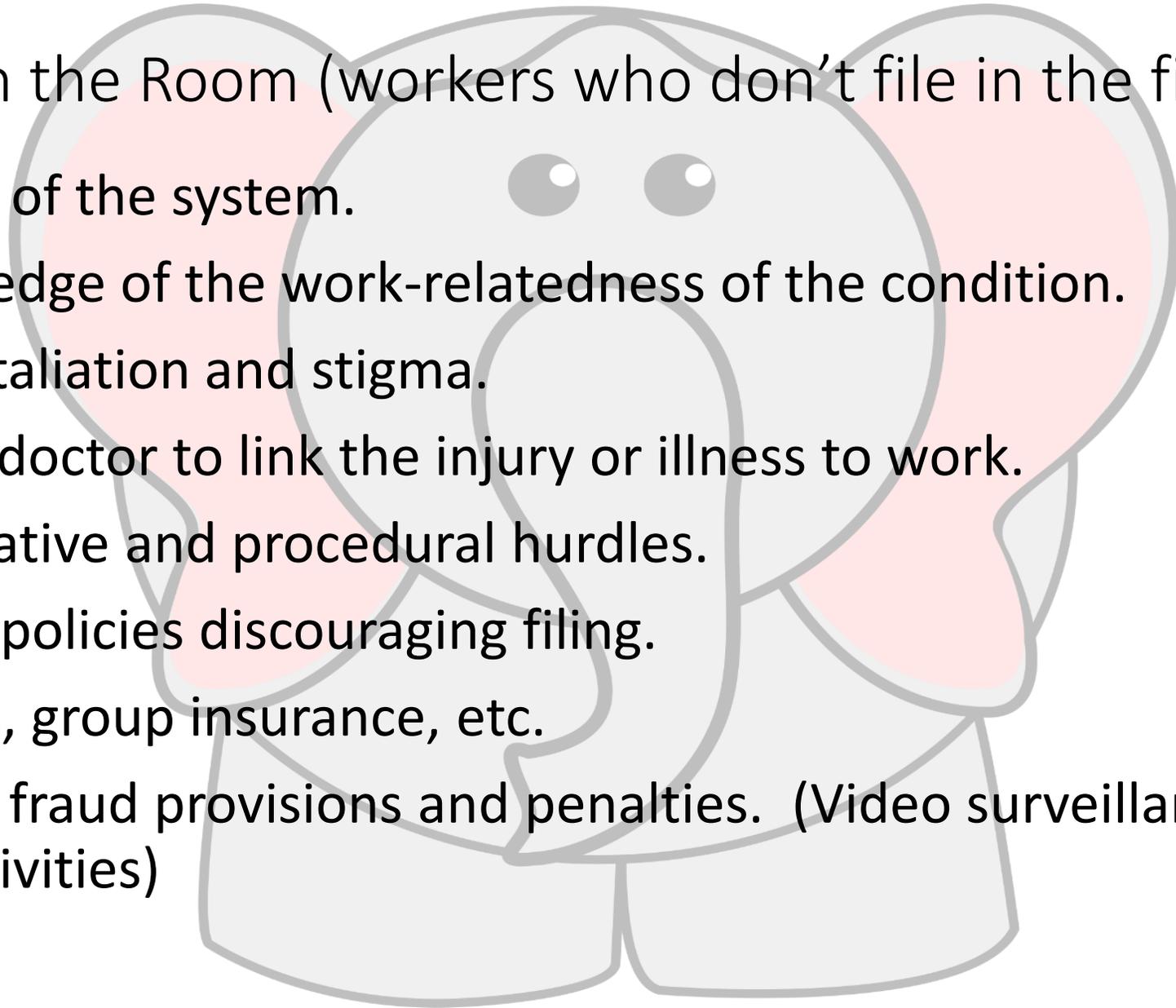
Legislatures believe stereotypes of injured workers as frauds and malingers. How pervasive? (Intakes)

Demolition of Workers' Compensation

- Pro publica 2015 article
- Professor Emily Spieler “Demise of the Grand Bargain” 69 Rutgers U Law Review
- Multiple Kinds of Retractions in Benefits
- Benefit inadequacy – Top Tier priority in 2016 WC Summit Draft

Elephant in the Room (workers who don't file in the first place)

- Ignorance of the system.
- No knowledge of the work-relatedness of the condition.
- Fear of retaliation and stigma.
- Failure of doctor to link the injury or illness to work.
- Administrative and procedural hurdles.
- Employer policies discouraging filing.
- Incentives, group insurance, etc.
- Enhanced fraud provisions and penalties. (Video surveillance, at home spying activities)



Race to the Bottom 1990 – 2018 (Domer's Dirty Dozen)

(Insidious changes not obvious to observers since no actual
reduction of TTD benefits)

1. Abandonment of liberal standard. New rules require winning cases by preponderance or clear and convincing evidence.
2. Rejection of “As Is” taking workers as they found them, supplanted by “major contributing cause,” (KA, SD) despite precipitation and aggravation through injury.
3. Apportionment Statutes requiring separation of work and non-work-related impairment, i.e., California percentage attributable to work event and excluding the rest. Wisconsin: other factors include aging, diabetes, etc.

Domer's Dirty Dozen

4. Exclusions from coverage. (Includes some repetitive motion, musculoskeletal injuries, mental health claims.)
5. Removal of Second Injury Funds. Rationale: cost of pre-existing impairment should not be added to responsibility of hiring employer. Increases costs to the system.
6. Rules putting onus of injury on the worker. (Requirement for post-injury drug testing, selective enforcement of safety policies if worker injured: results in non-reporting. Fault creeps back into the system – Wisconsin proposal / legislation.

Domer's Dirty Dozen

7. Limits on claimant's attorney fees despite increasingly complex litigation.
8. Rules regarding treatment modalities. (Roadblocks through utilization review impede prompt delivery of medical care.)
9. Requirement for objective evidence of impairment and disability. (Evidence based medicine, heightened distrust of soft tissue and back injuries.)

Domer's Dirty Dozen

10. PPD rates linked to most recent AMA Guides reducing benefit awards.
11. PTD benefits tightened (cut-off at age 65, offset by other disability benefits).
12. TTD duration limited (whether or not MMI or RTW achieved). State by state discrepancy (see chart)

STATE	EFFECTIVE DATE	WEEKLY MAXIMUM TEMPORARY DISABILITY
Mississippi	1/1/2017	\$477.82
Georgia	7/1/2016	\$575.00
Kansas	7/1/2017	\$630.00
Louisiana	9/1/2017	\$653.00
Idaho	1/1/2017	\$655.20
Arkansas	1/1/2017	\$661.00
Delaware	7/1/2017	\$686.99
Arizona	1/1/2017	\$695.68
Montana	7/1/2017	\$768.00
Indiana	7/1/2016	\$780.00
South Dakota	7/1/2017	\$781.00
West Virginia	7/1/2017	\$783.59
New Mexico	1/1/2017	\$796.77
Maine	7/1/2017	\$804.40
South Carolina	1/1/2017	\$806.92
Nebraska	1/1/2017	\$817.00
Kentucky	1/1/2017	\$835.04
Oklahoma	11/1/2015	\$841.90
Alabama	7/1/2017	\$843.00
Hawaii	1/1/2017	\$846.00
Utah	7/1/2017	\$855.00
Michigan	1/1/2017	\$870.00
New York	7/1/2017	\$870.61
Nevada	7/1/2017	\$874.37
Florida	1/1/2017	\$886.00
Wyoming	7/1/2017	\$894.00

New Jersey	1/1/2017	\$896.00
Ohio	1/1/2017	\$902.00
Texas	10/1/2016	\$912.69
Missouri	7/1/2017	\$923.01
Colorado	7/1/2017	\$948.15
Wisconsin	1/1/2017	\$961.00
North Carolina	1/1/2017	\$978.00
Tennessee	7/1/2017	\$992.20
Pennsylvania	1/1/2017	\$995.00
Virginia	7/1/2017	\$1,043.00
Minnesota	10/1/2016	\$1,046.52
Maryland	1/1/2017	\$1,052.00
Rhode Island	10/1/2016	\$1,154.00
North Dakota	7/1/2017	\$1,168.00
California	1/1/2017	\$1,172.57
Alaska	1/1/2017	\$1,239.00
Oregon	7/1/2017	\$1,280.80
Vermont	7/1/2017	\$1,281.00
Massachusetts	10/1/2016	\$1,291.74
Connecticut	10/1/2016	\$1,292.00
Washington	7/1/2017	\$1,375.66
Illinois	7/15/2017	\$1,440.60
District of Columbia	1/1/2017	\$1,467.46
New Hampshire	7/1/2017	\$1,537.50
Iowa	7/1/2017	\$1,720.00

Source: Social Security Administration, <https://secure.ssa.gov/poms.nsf/lnx/0452150045>.