

A BRIEF HISTORY OF WORKERS' COMPENSATION LAW



Presented By:

**Roger L. Williams, Commissioner
Virginia Workers' Compensation
Commission**

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EARLY ORIGINS



☞ 2050 B.C.

☞ The laws of Ur-Nammu, king of the city-state of Ur in ancient Sumeria, are recorded in Nippur Tablet No. 3191. The law of Ur provided for monetary compensation for specific injury to workers' body parts, including fractures.

☞ 1750 B.C.

☞ Code of Hammurabi provided benefits for specific injuries and their implied permanent impairments.

Ancient Greek, Roman, Arab & Chinese Law

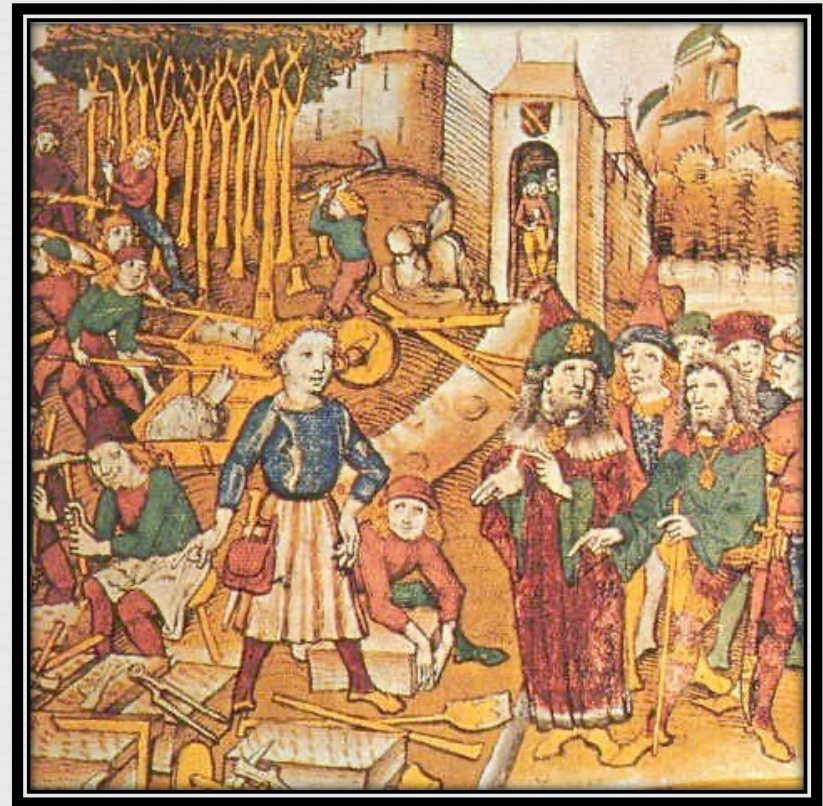


- ❧ Ancient Greek, Roman, Arab and Chinese law provided sets of compensation schedules.
- ❧ Precise payments for the loss of a body part. Under Arab law in particular, the loss of a joint of the thumb was worth one-half the value of a finger. Compensation for a lost penis was determined by length, and ear by surface area.
- ❧ In each, no distinction between impairment (the loss of function) and disability (the loss of ability to perform specific tasks or jobs).

MIDDLE AGES



Feudalism took root, meaning that compensation was arbitrary and dependent on the benevolence of the feudal lord.



1600s



Privateers, or pirates, such as Captain Henry Morgan, had a ship's constitution that provided for "recompense and reward each one ought to have that is either wounded or maimed in his body, suffering the loss of any limb, by that voyage."

- Right arm = 600 pieces of eight
- Left arm = 500
- Right leg = 500
- Left leg = 400



RENAISSANCE ERA



- ❧ The development of English Common Law prescribed a new framework for determining what injuries were compensable.
- ❧ Doctrines of contributory negligence, the fellow servant rule, and assumption of risk barred many injured workers from recovery. Any recovery was strictly through a tort case, which was prohibitively expensive for many.

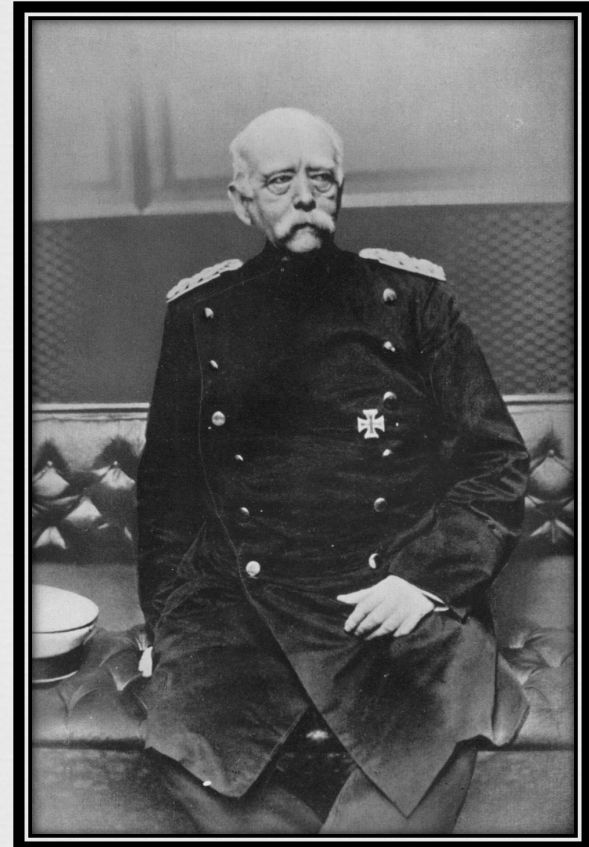
1800s



- ❧ Germany, 1838:
 - ❧ First step to protect injured workers with legislation to protect railroad employees and passengers in the event of an accident.

- ❧ Otto von Bismarck (1815-1898) and the Realpolitik (1860s-1890s):
 - ❧ Under the Marxist and socialist movements, protection for workers was a priority. These movements were problematic for Bismarck, who oppressed them and eventually outlawed the Social Democratic Party in 1875.

 - ❧ But, in order to maintain the support of the common citizen, he adopted portions of their agenda, including a system of social insurance.



1800s Cont.



- ❧ Georgia, USA, 1855:
 - ❧ Employer Liability Act
 - ❧ Based on premise that employee must bear own economic loss from accident unless they could show some other person's negligence caused it.
 - ❧ Twenty-six (26) other states passed a similar law by 1907. Some were limited to certain industries. Generally, negligence-based and eliminated or modified contributory negligence, assumption of risk, and fellow servant rule.

Germany, 1871



Employers' Liability Law of 1871

Provided limited social protection to workers in certain industrial fields: factories, quarries, railroads, and mines.

England, 1880



- ❧ Employer's Liability Act passed by Prime Minister William Gladstone.
 - ❧ Abolished the common-law tort defenses, but did not establish a no-fault system. Required proof of negligence by the employer in order for the employee to collect. Also, "right to die" contracts, in which workers renounced their right to sue for injury, were still widely used.
 - ❧ Made employer responsible for injuries on the job, and gave worker the right to sue the employer. Courts became backlogged and civil cases brought by the general public were delayed as a result. Workers increasingly began to prevail and lawyers started going after machines, buildings and property of employers. The Act was later replaced with the WC Act of 1897.

England, 1880 Cont.



- ❧ Identified certain classes of injuries covered, as well as five circumstances where common law didn't apply to workmen's injuries. Common law did not apply where the workman's injury was caused by:
 - ❧ Defects in condition of machinery or plant; defect must be the result of negligence by the employer or his servant. Exception: Employer not liable if the employee failed to give notice to employer of the defect of which he had knowledge and the employer didn't.
 - ❧ Negligence of supervisor,
 - ❧ Negligence of person with whose directions and orders the employee was required to conform, when the injury resulting from conforming,
 - ❧ Negligence of person in connection with act done in obedience to rules or by-laws of employer or in obedience to particular instructions given by anyone in authority, or negligence of any person who has charge or control of any, locomotive engine or train engine and railway.

Germany, 1884



Workers' Accident Insurance

- ❧ First modern system of workers' compensation. Closely followed by Public Pension Insurance, which provided a stipend for workers incapacitated by non-job related illnesses, and Public Aid, which provided benefits for those disabled from working. Largest benefits were granted to those with job-related injuries; medical care and rehab was covered.
- ❧ An exclusive remedy - employers could not be sued in civil court by their employees.
- ❧ Plan required mandatory insurance contributions from employers to sickness funds for workers, as well as contributions from workers themselves.
- ❧ The funds paid indemnity benefits to workers for up to 13 weeks. Totally disabled workers got 67% after this period, also paid by the fund.

England, 1897



Workers' Compensation Act

- ❧ First proposed in Parliament in 1893, but took four years to get passed.
- ❧ Largely equivalent to 1884 Prussian law and established a no-fault doctrine of compensation. Did not fully rely on state administration like the German model, but instead on "Friendly Societies" that had provided disability insurance.
- ❧ Was opposed by manufacturing industry, and passage was further delayed in the House of Lords by debates about adding specific language regarding right to die contracts.
- ❧ Negligence removed as a condition of liability, common law and Employers' Liability Act defenses also removed, except for injury attributed to serious and willful misconduct of workman.
- ❧ Only covered railroads, factories, mines, quarries, engineers and construction of buildings.
- ❧ Used language "injury by accident arising out of and in the course of employment."

France, 1898



- ❧ Legislation passed requiring industries to assume responsibility for injuries except those clearly shown to be caused by inexcusable negligence by employees.
- ❧ In cases of total disability, the law awarded pensions equivalent to two-thirds of the disabled worker's salary.
- ❧ In the event of an employee's death, dependents were provided with funeral expenses and a pension.
- ❧ The first attempt to remove the theory of negligence failed in 1880. Various other attempts failed in 1883, 1888, 1890, 1895, and 1897.

1900s



- ❧ From 1880 to 1900, the Industrial Revolution gathered steam and the legal profession was growing.
- ❧ Several factors contributed to the widespread support and rapid enactment of workers' comp legislation: the number of workplace accidents had increased, many states had passed employer liability laws, and court decisions limited employers' defenses in liability suits. This climate increased the uncertainty of the negligence liability system.
- ❧ Rate of victory for plaintiff/employees had been steadily increasing; by 1908, had been winning approximately 15% of all cases.
- ❧ By 1910, most employers were in favor of a WC system, and many unions shifted their focus from reforming the negligence liability system to supporting WC. For both sides, the negligence system often meant court delays and expensive attorney's fees.
- ❧ WC offered a reduction in administrative cost and delays, and insurance overhead by creating a no fault system.

USA, 1906, 1908



- ❧ Congress passes the Federal Employer's Liability Act of 1906 and 1908.
- ❧ Voided the common-law doctrine of contributory negligence.
- ❧ Introduced principle of comparative negligence; employers could no longer avoid responsibility for grave negligence, even if workers in some manner negligent.
- ❧ Idea had first been set forth by Justice Breese of Illinois in 1858, and since that time comparative negligence had been incorporated into the laws of several states: Maryland (1888), Georgia (1895), Nevada (1905), Florida (1906), Nebraska (1907), North Dakota (1907), South Dakota (1907), Wisconsin (1907).

New York, 1910



Wainwright Commission

- ✧ Eastman, among others, was appointed to the Wainwright Commission, which was created to investigate the problem of work accidents in the state of New York, and recommend new legislation to address it.
- ✧ NY, Maryland, Massachusetts and Montana had each adopted WC reforms by 1910. Labor unions were opposed to the reforms, out of concern that the reforms would render unions obsolete. Each of the 4 reforms were ultimately declared unconstitutional on due process grounds.
- ✧ The Wainwright Commission's proposed legislation was struck down by New York's highest court as a violation of employers' property rights on March 24, 2011.

Triangle Shirtwaist Fire



New York, March 25, 1911:

- ❧ Fire believed to have been initially caused by a cigarette butt.
- ❧ Happened just one day after the Wainwright Commission's proposed legislation had been struck down, and only blocks from Eastman's apartment.
- ❧ 146 died, of whom 123 were women. Most were recent Jewish and Italian immigrants between the ages of 16 and 23. They worked 9 hours each weekday, and 7 hours on Saturdays for a total weekly wage of \$7 to \$12 - the equivalent of \$3.20 to \$5.50 per hour today.



Triangle Shirtwaist Fire

Cont.

- Multiple safety issues present, but because workroom doors were locked shut (to prevent theft and keep workers at their stations), employees on the upper floors of the factory perished – many jumped to their deaths.
- The factory owners, who had violated a number of safety standards, faced criminal manslaughter charges but were not convicted. In 1913, survivors won approximately \$75 per victim in a civil suit.



Triangle Shirtwaist Fire

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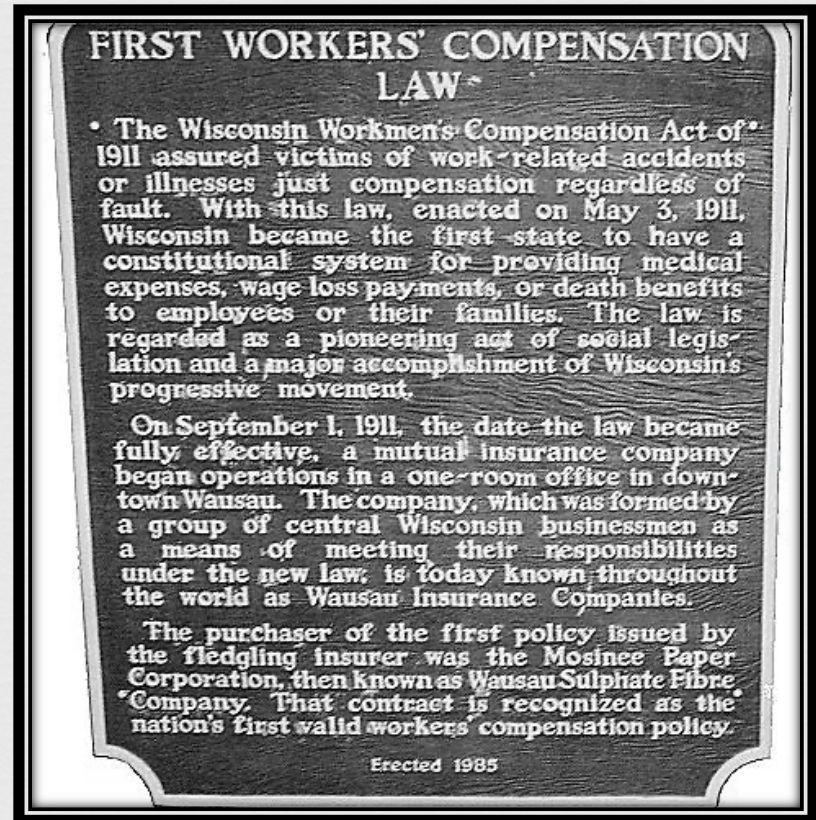
- ❧ The Triangle Shirtwaist Fire was a turning point in American work practices and international labor standards.
- ❧ As a result of the fire, New York established the Factory Investigating Commission. At the Commission's recommendation, the state passed approximately 64 new laws and safety regulations between 1911 and 1913.

First Workers' Comp Laws



☞ May 3, 1911:

- ☞ Wisconsin becomes the first state to pass a comprehensive workers' comp law.
- ☞ Massachusetts followed on July 28, 1911. Eight other states passed similar laws by the end of 1911, and 36 more by the end of the decade.



Questions?

