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An Examination of the New York State Workers' Compensation Reform Act of 2007

Julia Ostrov

Workers' compensation, a critical safety net for injured and ill workers in the form of medical care and wage replacement benefits, emerged on the heels of the Industrial Revolution as the first extensive social insurance program in the United States. Over the past two decades, workers' compensation policy in New York State has followed a national trend of severe retrenchment in benefits to workers. This paper takes as its focus an examination of the most recent workers' compensation reform legislation in New York, and provides a discussion of the important role social workers can play in promoting social justice within the workers' compensation system.

Key words: workers' compensation, social legislation, labor policy, social justice, New York State, work-related injury, work-related illness

The year 2014 marked the one-hundredth anniversary of the permanent enactment of workers' compensation¹ law in New York State (NYS). Often portrayed as reaching a middle ground between labor and business, workers' compensation legislated a no-fault system of medical care and wage replacement benefits for injured workers; in exchange, workers effectively gave up their right to sue their employers in the event of injury or illness. Workers' compensation remains today the exclusive remedy for workers who are injured or become ill in the course of employment, however, the value of benefits for workers has been much diminished over time. New York's workers' compensation policy, in the face of rapidly rising system costs and at the hands of business and governmental interests, has undergone severe retrenchment in terms of benefits to workers over the past two decades. Most recently, the NYS Workers' Compensation Reform Act of 2007 included a sweeping blow in benefits to workers. This paper will address the 2007 reforms, and attempt to bridge the gap in knowledge

about workers' compensation within the field of social work, as social work literature on this topic is scant.

As the primary safety net for injured workers, and the first extensive social insurance program in the United States, workers' compensation deserves significant attention from the field of social work. Social workers have an important role to play in promoting social justice within the workers' compensation system, specifically in helping injured or ill workers access benefits, addressing issues of disparities and exclusion, and challenging the past two decades worth of retrenchment.

Origins & Scope

Following on the heels of the Industrial Revolution, workers' compensation emerged as the first large-scale social insurance program in the United States. In large part, workers' compensation was a reaction to the excesses and brutalities of laissez-faire capitalism and unbridled economic growth. The rapidly expanding industrial economy of the previous century had birthed an array of life- and limb-threatening occupations including manufacturing, coal mining, logging, steel-working, railroad-related jobs, and construction (Eastman, 1969). Workers were increasingly being seriously harmed or killed in the course of their work. Initial efforts (pre-workers' compensation) to cope with the swiftly rising death and injury toll were wide-ranging, including tort litigation against employers, cooperative insurance associations amongst workers, and in-house employer-sponsored relief-funds, all of which were ultimately dissatisfying to the various parties involved (Witt, 2004).

The mainstream narrative among both the popular press and academic scholarship is that out of piecemeal efforts to address this industrial accident crisis, a "broad-based coalition" of support developed for a state-regulated solution in the form of workers' compensation (Fishback & Kantor, 2000, p. 113). Enacted first by the federal government in 1908 for certain federal employees, then in over 40 states over the course of the next decade, workers' compensation laws mandated most employers to purchase workers' compensation insurance from private or state-sponsored insurance companies; these companies were then responsible for shouldering the cost of medical

care and wage replacement benefits for workers or their families in the event of injury or death (Sengupta, Baldwin, & Reno, 2014; Terrell, 2008). While federal and state coverage statutes did not initially include mention of occupational disease, later court decisions and legislative amendments made compensable various diseases that either develop due to occupational accident or injury, or that are themselves considered to be "particular to some line of work" (Barth, 1980, pp. 95-96).

From a social work perspective, the workers' compensation system was in essence a social insurance program, wherein employers made contributions on behalf of their employees to an insurance pool, which would then disburse benefits to workers in the event of injury or illness (Terrell, 2008). State laws varied widely in administrative procedures, levels of wage replacement benefits, and regulations, such as which employers were exempt from compulsory insurance purchase (Sengupta et al., 2014). Across the board, however, these laws set up a "no-fault" system of compensation, such that a worker sustaining an injury or illness that "arose out of ... and in the course of employment" was entitled to compensation—regardless of whether the employer, employee, or neither were responsible for the worker's misfortune (Burton, 2007, pp. 3-4; Rich, Farnham, & Parmele, 1918, pp. 896-897). In legal terms, workers' compensation became the "exclusive remedy" for injured or ill workers: in most states, workers gave up their right to sue their employers in exchange for this guaranteed safety net (Hood, Hardy, & Lewis, 2011, pp. 73-74).

In the event of injury or illness today in New York State, a worker may submit a claim to the State's administrative law agency, known as the Workers' Compensation Board. The Board, which operates under the auspices of the Governor and consists of 1500 employees state-wide, including a politically appointed Chair and set of commissioners, is the entity responsible for adjudicating workers' claims (New York State Workers' Compensation Board [NYSWCB], n.d.a). Depending upon the nature and severity of the injury or illness, and the duration (if any) of time out of work, most workers in NYS are entitled to receive medical care and various levels of cash benefits (NYSWCB, n.d.b). In 2012, medical and wage replacement benefits totaled \$5.4 billion in NYS and \$61.9 billion nationally (Sengupta et al., 2014). These figures reflect the vast reach

of workers' compensation coverage, which applies to most of the country's working population: approximately 90%, or an estimated 127.9 million workers (Sengupta et al., 2014; Terrell, 2008).

Workers may submit a workers' compensation claim in the event of any injury or illness arising out of or in the course of employment. In 2012, there were a total of 215,000 non-fatal workplace injuries and illnesses reported in New York State, out of a national total of 3.8 million (United States Bureau of Labor Statistics [USBLS], n.d.c; USBLS, n.d.d). Out of all injuries and illnesses requiring days away from work, 33% were musculoskeletal in nature, such as pinched nerves, herniated discs, sprains, strains, tears, carpal tunnel syndrome, and connective tissue diseases (USBLS, n.d.e). Occupational illnesses alone (excluding injuries) accounted for 5.5% of the 3.8 million total, and included "other" illnesses (e.g., effects of radiation or environmental exposure, blood-borne diseases, tumors), skin disorders, hearing loss, respiratory conditions, and poisoning, respectively (USBLS, n.d.c; USBLS, n.d.f). Relevant to note, however, is that several prominent sources have addressed the issue of dramatic underreporting (both by employees and employers) of workplace injuries and illnesses, such that state and national figures should be considered very rough estimates (United States House of Representatives Committee on Education and Labor, 2008). The lack of a truly representative count holds true for workplace fatalities as well, which officially numbered 4,628 nationally and 202 in New York in 2012 (Steenland, Burnett, Lalach, Ward, & Hurrell, 2003; USBLS, 2014; USBLS, n.d.a; USBLS, n.d.b).

Policy Developments: Reform and Retrenchment

A surge in news reporting on workers' compensation policy in New York State emerged from the 1990s through the contemporary period due to debates over the exponentially rising costs of the system. Public dialogue about workers' compensation during this timeframe has persistently pitted labor against business, with "reform" typically signaling—both in language and in law—retrenchment in benefits for workers.

From the 1980s into the mid-90s, employers across the

country witnessed an unprecedentedly swift rise in workers' compensation costs (Burton, 2001). Nationally, the cost of workers' compensation for employers had stayed relatively flat at around 1.0% (per \$100 of covered wages) from 1940 (when the first statistics are available) to 1970 (United States Social Security Administration [USSSA], 2013). By 1980, though, the cost was at 1.96% and grew from there, hitting its peak at 2.17% in 1993 (USSSA, 2013). Beginning in the 80s, within the context of a neoliberal era in which attacks on the public safety net took center stage politically, business interests began to put increasing pressure on lawmakers and government officials to reduce labor costs by making significant cuts in workers' compensation benefits and creating barriers to coverage (Tarpinian, Tuminaro, & Shufro, 1997). Dozens of state legislatures across the country responded by drastically altering their workers' compensation laws in order to lower costs for employers and insurers, constituting a national wave of retrenchment in benefits to workers (Ellenberger, 2000; Grabell & Berkes, 2015; Hicks & Cooke, 1995; Loomer & Shultz, 1993; McDonald & McDonald, 1997; Spieler & Burton, 1998).

Critical to the passage of these reforms was the portrayal of state economies as being in crisis due to rising costs in the system, a narrative that surfaced in New York in the lead-up to both pieces of workers' compensation policy passed in the past two decades: the Omnibus Workers' Compensation Reform Act of 1996 and the Workers' Compensation Reform Act of 2007. Arguing for the '96 reforms, business interests (employers and insurers) as well as sympathetic politicians (Governor Pataki) stressed that New York was becoming inhospitable to business because of high workers' compensation premiums, and that reforming the system was the only way to keep businesses from leaving the state (Tarpinian et al., 1997). New York's 1996 Reform Act included cost-saving provisions that resulted in several setbacks for workers, including the expansion of managed care and changes to administrative procedures that made it more difficult for workers to access benefits; however, Tarpinian et al. (1997) provide a compelling history of how a coalition of labor forces, both grassroots and professional, rose up and succeeded in fighting back against some of the more drastic reform proposals through concentrated efforts in research, education, publicity, and advocacy.

The 2007 Reform Act

In the decade leading up to the 2007 Reform Act, pressure for change in the workers' compensation system was present from all sides. Stakeholders in business joined with government voices to again argue that high premiums were hurting economic opportunity in the State, and depictions of workers as cheats and malingerers milking the system were not uncommon (Hakim, 2005; Hakim & Chan, 2007; Prewitt, 2005; Rosenfeld, 2007). Labor interests, on the other hand, emphasized the inordinately low ceilings for worker benefits compared to those in other states, and advocated reducing costs in the system by eliminating insurance company corruption and unwieldy profit-making (Mesh, 2006; Roberts, 2005). Additionally, injured and ill workers suffered (and continue to suffer) from delays in receiving medical care because of claims contested by insurance carriers; demeaning "independent medical examinations," performed by doctors essentially incentivized to minimize the extent of a worker's illness or injury; and frustration in having to navigate a lengthy, complex, and mysterious bureaucratic process in order to get their claims adjudicated (Greenhouse, 2009; Kleinfeld, 2009; Kleinfeld & Greenhouse, 2009). Adding to this, the NYS Worker's Compensation Board had no authority to go after employers who were cheating the system out of millions of dollars in premiums by mis- or under-representing their workforce; while it was a felony to commit fraud as an employee by faking a claim, it was only a misdemeanor for an employer to illegally refrain from purchasing workers' compensation insurance, and that crime was rarely prosecuted (Fiscal Policy Institute, 2007; Greenhouse, 2007).

The dominant narrative about the 2007 reforms has been one of success in ameliorating the majority of these problems in the system, and in meeting the needs of both labor and business. In the immediate aftermath of the reforms, representatives from both government and business interests applauded significant cost-cutting. Democratic Governor Spitzer, who signed the 2007 legislation and made it a priority from the very beginning of his term as part of his efforts to improve New York's environment for business, proclaimed a reduction in insurance premium costs for employers of 10 to 15%, a figure

which by July of that year had risen to 20.5% (Gormley, 2007). The reforms were hailed by the Business Council of NYS as "a major step forward toward reducing the cost of doing business" in the state and were lauded by Republican State Senator John Flanagan as "great news for the financial well-being of New York businesses and of our state as a whole" (Ceniceros, 2007, para. 11; Flanagan, 2007, para. 4).

For labor interests, however, the outcome of the reforms was not so straightforward; while labor secured some improvements for which they had been fighting for over a decade, these gains excluded vital provisions and came at the expense of a drastically reduced benefit structure. The primary positive outcome for workers was the raising of the minimum and maximum weekly benefit rates, a change long-fought for by labor. This meant that the ceiling on benefits of \$400 per week would be raised for the first time in 15 years, first to \$500 per week, and then progressively higher each year until July 2010, when the maximum would be indexed to two-thirds of the State's average weekly wage (NYSWCB, 2008). Governor Spitzer, who declared the reforms a "win-win" for labor and business, (and later the Workers' Compensation Board, which proclaimed the reforms a success) cited the raise in the maximum weekly benefit as being a great victory for workers (NYSWCB, n.d.c; Ruquet, 2007; Spitzer, 2007). While this provision was a much-needed step forward, it remains problematic because it excludes workers who were injured or became ill before the July 1, 2007 date, and because it benefits only high wage earners. The minimum weekly rate was raised from \$40 to \$100 per week, but unlike the maximum weekly rate it was not indexed to account for inflation, an omission that negatively affects low-wage earners (Grey, 2008). Additionally, the reforms provided for no indexing of benefits received over time, such that regardless of date of injury or illness, or amount of benefit, workers are not entitled to any cost-of-living increases (Grey, 2008).

Changes in administrative procedure and medical guidelines similarly paint a mixed picture for workers. On the positive side, the reforms included provisions to incentivize a reduction in the disputation of claims by insurance companies, and new requirements to hasten the resolution of controverted claims. According to the Board, both measures have already

been successful in streamlining the adjudication process for workers, to some extent (NYSWCB, n.d.c). The reforms also included the implementation of new medical treatment guidelines, with the stated purpose of standardizing best medical practices and reducing the lag time between when a medical provider recommends a treatment and when the insurance company approves it (NYSWCB, n.d.c). While some labor advocates were in favor of medical treatment guidelines, others argue that these guidelines have created a new tangle of paperwork for medical providers, placed a heavy burden on workers and their physicians to prove need for medical care, greatly restricted palliative care for workers with chronic conditions, and largely failed to speed up the provision of care (Grey, 2011).

One decidedly positive outcome for workers, and for the workers' compensation system as a whole, was a significant enhancement in the jurisdiction of the Workers' Compensation Board to enforce insurance standards. Stop-work orders can now be issued by the Board to out-of-compliance employers, improved technology has made it more feasible for the Board to identify such employers, and, significantly, the failure of an employer to maintain adequate workers' compensation insurance has been reclassified from a misdemeanor to a felony (NYSWCB, n.d.c). In the first year and a half of the new legislation, over 1,700 stop-work orders were issued by the Board (along with \$20 million levied in penalties), a total which has since risen to over 9,000 (NYSWCB, 2008; NYWCB, 2014). The Board has reported that the use of these stop-work orders has proved to be an effective mechanism for swiftly bringing employers into compliance (Martino, 2007; NYWCB, 2008).

Keeping these relative gains and limitations in mind, the paramount story in the 2007 reforms is one of a drastically slashed benefit structure for workers. The core of the cost-cutting in the system was accomplished by imposing permanent partial disability (PPD) benefit caps, a limitation on the amount of time a worker classified as having a permanent partial disability can collect benefits. Workers who are classified with a severe degree of impairment, meaning that their earning capacity will be affected permanently, are most frequently classified as having a permanent partial disability (as opposed to a permanent total disability) (Sengupta et al., 2014, p. 7).

Widely regarded as a major expense for business, PPD benefits had come under attack in New York (and many other states) before, and in fact was a category of benefit that labor successfully fought to protect in advance of New York's Omnibus Act a decade earlier (Rosenfeld, 2007; Tarpinian et al., 1997). This time, however, the push from business and government was too strong. Whereas prior to the 2007 reforms, a worker classified as having a permanent partial disability was entitled to benefits for the lifetime of the disability (which could be a worker's lifetime), with these reforms, PPD benefits max out at 10 years—with most claimants not entitled to receive benefits for even that long (New York State Insurance Rating Board, 2007; NYSWCB, n.d.c).

The significance of this reduction in benefits to workers cannot be overstated, both in terms of cost and what the reduction represents symbolically. While some expense to business (estimated at about \$164 million per year) was increased with the raise in maximum weekly benefit levels, savings for employers and insurance companies based on the PPD caps is estimated at \$822 million per year; this amounts to a transfer of billions of dollars in wealth from workers to business interests (Grey, 2008). It is of significant note here that in the Governor's commentary on the reforms, and in many of the business news sources that hailed the 2007 reforms as a huge success, the cap on PPD benefits was wholly ignored; the narratives focused instead on cost-cutting for business and a win for labor in the form of increased maximum weekly benefits. The portrayal of the reforms as successfully meeting the needs of both labor and business has been articulated by the Workers' Compensation Board as well. The Board released a report in December 2008 on the impact of the reforms which fails to even mention the PPD caps, and a subsequent Board report on the success of the reforms buries the issue of PPD caps on page eight, wherein the caps are contextualized with phrases like "fair and timely application" and noted for "produc[ing] significant savings" (NYSWCB, 2008; NYSWCB, n.d.c). The question that rings aloud is, what will savings such as these cost workers, and in turn our society as a whole, in the long run?

From a symbolic standpoint, the cap on PPD benefits, and thus the cost of the 2007 reforms as a whole, represents a retreat backwards to a system where workers who are injured

or become ill in the course of employment are held accountable for their own unfortunate circumstances. The words of Tarpinian et al. (1997) are still highly applicable today after the 2007 reforms:

From the perspective of labor and its allies, the real crisis in workers' compensation is the number of workers who suffer preventable injuries and then are denied adequate benefits. For labor, the business push for "reform" represents an effort to shift the costs of workplace injuries from employer-paid premiums to the injured workers themselves and to the taxpayers who ultimately pick up the tab when disabled workers must turn to welfare, Social Security disability, or Medicaid because they failed to receive adequate and timely medical and wage replacement benefits from the compensation system. (p. 37)

The issue of recourse is also critical here. As Strunin and Boden (2004) explain, "injured workers gave up their right to sue their employers for the promise of a speedy and efficient administrative system that would pay medical and income benefits automatically for injuries that occurred 'out of and in the course of employment'" (p. 338). The push towards shifting the cost of workplace injury back on to injured workers does not account for this sacrifice that workers made in giving up their right to sue. Business and government, interested primarily in preserving profitability, are asking "what are the cost drivers? Not—what are the rights that people have?" (D. Tuminaro, personal communication, May 12, 2011).

Troublingly, though not surprisingly, business interests want to go further still in rolling back benefits for workers in order to accomplish further cost-cutting. In the period since the 2007 reforms, business-affiliated entities have published white papers on the impact of the reforms that call for additional anti-worker measures such as speeding up classification of PPD claims so that the time clock on limited benefits starts ticking sooner, restricting workers' choice of physicians to a pre-approved medical panel, and re-vamping what is known as "schedule of loss" payments such that one-time payments to workers would be reduced (Rosenberg, 2012; The Public

Policy Institute of New York State, Inc., 2012). These reports also call for a rollback on the gains for workers included in the 2007 reforms, namely by advocating for the de-indexing of the maximum weekly benefit.

Workers' compensation reform in New York State has served over the past two decades as a potent instrument for the dismantling of worker protections. The 2007 reforms, and the continued business resolve towards higher profits, ultimately have significant human costs in the form of a greatly diminished social safety net for workers and their families.

Through the Lens of Social Justice: A Role for Social Workers

Workers' compensation, as the exclusive remedy for injured or ill workers, exists at the nexus of disability and economics, of law and personal experience, of occupation and health, of family wellness and societal productivity. As a profession that welcomes interdisciplinary learning and action, social work is in a unique position to contribute within the workers' compensation practice and policy arena. As professionals committed to manifesting social justice on both micro and macro levels, social workers are well-equipped to intervene at various levels of the workers' compensation system. Social justice, a value defined in the National Association for Social Workers' "Code of Ethics," involves working with and on behalf of vulnerable populations to "ensure access to needed information, services, and resources; equality of opportunity; and meaningful participation in decision-making for all people" (2008, "Ethical Principles," para. 3). In promoting social justice within the workers' compensation system, social workers can help to set the bar for how New York State responds to those among our vulnerable populations, injured and ill workers and their families.

Social workers have a clear social justice role to play in facilitating access to information, services, and resources pertaining to workers' compensation. In medical settings, such as hospitals or occupational health clinics, and in employment settings, such as employee assistance or member assistance programs, social workers are in a position to offer direct

counseling and guidance to injured or ill workers. Because of the complex administrative nature of filing and pursuing a workers' compensation claim, social workers can help workers to successfully navigate a system that may otherwise feel insurmountable. (For claims process information, pro-worker policy perspectives, and advocacy resources, see the Workers' Comp Hub online at <http://workerscomphub.org/>). An article published within the social work literature 30 years ago offers additional suggestions for increasing access to workers' compensation that still apply today, including the use of educational tools to promote awareness about workers' compensation eligibility and the facilitation of support groups for injured or ill workers where information can be exchanged (Shanker, 1983).

The social justice issue of access to knowledge and benefits, as well as the issue of equal opportunity, are particularly relevant when considering disparities and exclusions that factor into workers' compensation policy and practice. From a policy standpoint, both domestic workers and agricultural workers historically have been excluded from workers' compensation coverage in New York State, as well as in many other states around the country. Mirrored by the national Fair Labor Standards Act of 1938, which excluded domestic and farm workers from protections such as minimum wage and overtime pay standards, workers' compensation laws, as they were initially written in most states, similarly prohibited these workers from entitlement to compensation (Perea, 2010; Smith & Goldberg, 2010). These statutes reflected the economic and racial legacies of slavery in the United States, as well as strong agricultural lobbies, and these exclusions sadly remain unchanged to date in many states (Perea, 2010; Smith & Goldberg, 2010).

Issues of access and disparity are highlighted by the current policies governing protections for domestic and farm workers in New York State. New York took a significant stride towards reducing disparity for domestic workers with the passage of a groundbreaking law in 2010: the Domestic Workers Bill Of Rights, the first of its kind in the nation. The result of a decade of grassroots advocacy, this law made both full- and part-time domestic workers eligible for workers' compensation benefits as well as for many other employment rights and protections

(Hand in Hand, n.d.). Despite its success, however, this law nonetheless excluded critical provisions such as paid sick days and, because of a lack of technical clarity in the bill that has not yet been resolved, only domestic workers employed full-time (40 hours per week) are currently covered under workers' compensation (Hand in Hand, n.d.; New York State Department of Labor, n.d.).

Most farm workers, in contrast, gained entitlement to workers' compensation benefits through a legislative amendment in 1966; however, they still lack other basic protections recently won by domestic workers (McKinney's, 1966, ch. 646, sec. 3; New York Civil Liberties Union, 2013). The Farmworkers Fair Practice Labor Act, which would establish collective bargaining rights for farm workers, provide for an eight-hour workday and overtime pay, and require one day of rest per week, passed the New York State Assembly in 2013 but is still held up in a divided Senate (New York State Senate, n.d.; Seller, 2013).

Social workers have a role to play in advocating for passage of this Act, for full employment benefits for part- and full-time domestic workers in New York, as well as for the expansion of workers' compensation coverage and other workplace protections for domestic and farm workers across the country. The positive changes accomplished with the Domestic Workers Bill Of Rights serve as an important reminder that workers' compensation policy, as with any legislation pertaining to the rights of workers, is a dynamic rather than a static entity, with the capacity to be broadened towards inclusivity.

In addition to policy provisions that create categories of exclusion, informal practices and disincentives also contribute to disparity within the workers' compensation system and signal an opportunity for social work intervention. A study conducted in a New York State occupational health clinic in the 90s, for example, found that "claims filed by non-Whites, low-wage workers, and union members were significantly more likely than others to be challenged" by insurance companies (Herbert, Janeway, & Schechter, 1999, p. 335). Further evidence suggests that there are significant barriers to even attempting to access benefits, as a 2008 survey of low-wage workers in New York City found that only 11% of those workers who had experienced a severe workplace injury in the past three years

had filed a workers' compensation claim (Bernhardt, Polson, & DeFilippis, 2010). Spieler & Burton (2012) review the findings of various related studies that investigate the many potential barriers to filing a claim, such as fear of stigma, pressure from coworkers, or corporate culture.

Discrimination and de facto exclusion also play a role for immigrant workers, particularly those who are undocumented. While technically entitled to full workers' compensation benefits in New York State, undocumented immigrant workers face a number of additional obstacles to accessing benefits, including a lack of knowledge about workers' compensation, linguistic barriers, and the threat or fear of retaliation from employers (Smith, 2012). Social workers in positions of assistance to immigrant and low-wage workers can begin to address these significant obstacles by offering complete and accurate information, helping individual workers to weigh potential consequences of submitting a claim, and advocating for workers whose claims are contested by insurance carriers or who are experiencing retaliation from their employers.

Also relevant to social workers promoting social justice within the workers' compensation system, to be considered alongside issues of access and equal opportunity, is the issue of meaningful decision-making for all people involved in the system. The contents of the 2007 reforms reflect powerful lobbying by business interests, whose proponents have been gaining momentum in New York State and across the country for the past several decades. Injured and ill workers and their families, pro-worker lawyers, labor unions, occupational health professionals, and social activists all have something to contribute in challenging retrenchment and in advocating for robust worker protections.

The success of any such coalition in gaining a place at the legislative table will, in large part, depend upon how well it is able to communicate its message. Hilgert (2012) offers a compelling argument for adopting a human rights framework in advocacy for workers' compensation protections. Recognizing that workers' compensation was embedded from its inception in "market efficiency frameworks," Hilgert advocates "shifting the focus to basic human rights and the real interests of injured workers as the human rights-holders" (2012, p. 517).

Domestic Workers United, the grassroots coalition responsible for the decade-long campaign that successfully resulted in the Domestic Workers Bill Of Rights, modeled this approach by promoting a human rights framework that emphasized dignity and respect, and the value of domestic workers as human beings (Smith & Goldberg, 2010). In the quest to gain recognition for the plight of injured and ill workers, and to afford these workers a voice in policy decisions that will have a great impact on their lives, such a human rights framework deserves serious consideration by social workers as part of a social justice approach to change within the workers' compensation system.

Conclusion

In discussing the meaning of work in people's lives, Akabas & Kurzman (2005) explore both explicit and intangible rewards, writing of the latter that "work not only binds the ego, in the psychodynamic sense, but also, sociologically, binds an individual to the larger society as well" (p. 41). For those workers who are, for reasons of injury or illness, temporarily or permanently unable to sustain this vital connection to work, workers' compensation laws exist to make sure that they have access to adequate medical care and financial support. This paper has attempted to address the weakening of this safety net for workers over the course of the past two decades in New York State. The sweeping reduction in benefits to workers with permanent disabilities in the Workers' Compensation Reform Act of 2007 has both economic and symbolic consequences, signaling a retreat back to a system in which workers and their families bear the burden of their own misfortune. As part of a social justice approach, social workers may intervene at various levels: by helping individuals to access benefits; by addressing barriers to access within workplace communities, such as discrimination and de facto exclusion; by advocating for inclusive policies that provide coverage for all workers; and by participating in pro-labor coalition building, with injured and ill workers at the forefront, in order to challenge recent trends of legislative retrenchment.

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References

- Akabas, S. H. & Kurzman, P. A. (2005). *Work and the workplace: A resource for innovative policy and practice*. New York: Columbia University Press.
- Barth, P. S. (with Hunt, H. A.). (1980). *Workers' compensation and work-related illnesses and diseases*. Cambridge, MA: The MIT Press.
- Bernhardt, A., Polson, D., & DeFilippis, J. (2010). *Working without laws: A survey of employment and labor law violations in New York City*. Retrieved from http://www.nelp.org/site/issues/category/research_on_the_growth_of_unregulated_work
- Burton, J. F., Jr. (2001 September/October). Workers' compensation: Developments since 1960 and prognostications for benefits and costs. *Workers' Compensation Policy Review*, 1(5), 3-19. Retrieved from <http://workerscompresources.com/wp-content/uploads/2012/11/SO01.pdf>
- Burton, J. F., Jr. (2007, May/June). An overview of workers' compensation. *Workers' Compensation Policy Review*, 7(3), 3-27. Retrieved from <http://workerscomphub.org/resources/overview-workers-compensation>
- Ceniceros, R. (2007, March 5). Employers welcome Spitzer comp reforms. *Business Insurance*, 41(10), 1, 29.
- Eastman, C. (1969). *Work accidents and the law*. New York: Arno Press.
- Ellenberger, J. N. (2000). The battle over workers' compensation. *New Solutions*, 10(3), 217-236. Retrieved from <http://workerscomphub.org/resources/battle-over-workers-compensation>
- Fiscal Policy Institute. (2007, January 25). *New York State workers' compensation: How big is the coverage shortfall?* Retrieved from http://fiscalspolicy.org/publications2007/FPI_WorkersCompShortfall_WithAddendum.pdf
- Fishback, P. V., & Kantor, S. E. (2000). *A prelude to the welfare state: The origins of workers' compensation*. Chicago, IL: The University of Chicago Press.
- Flanagan, J. J. (2007, March 13). *New workers' compensation law delivers results in its first year* [Web post]. Retrieved on October 20, 2014 from <http://www.nysenate.gov/news/new-workers-compensation-law-delivers-results-its-first-year>
- Gormley, M. (2007, July 12). Spitzer touts overhaul of workers' comp law; Governor says changes will save \$1 billion for state businesses. *Albany Times Union*, p. C1.

- Grabell, M., & Berkes, H. (2015, March 4). *The demolition of Workers' Comp*. Retrieved from <https://www.propublica.org/article/the-demolition-of-workers-compensation>
- Greenhouse, S. (2007, January 25). Study says many firms cheat New York workers' comp system. *The New York Times*, p. B1.
- Greenhouse, S. (2009, April 2). A world of hurt: In workplace injury system, ill will on all sides. *The New York Times*, p. A1.
- Grey, R. E. (2008, April 28). *Workers' compensation in New York State: State of the system 2008* [White paper]. Retrieved from <http://nycosh.org/index.php?page=on-workers-comp>
- Grey, R. E. (2011, April 12). *Re: Medical treatment guidelines* [Letter]. Retrieved from <http://www.nyworkerscompensationalliance.org/uploads/file/MTGLetter2finaledit.pdf>
- Hakim, D. (2005, December 19). Plan to overhaul workers compensation puts focus on cap issues. *The New York Times*, p. B1.
- Hakim, D., & Chan, S. (2007, January 3). Spitzer speech will urge fiscal restraint. *The New York Times*, p. B3.
- Hand in Hand: The Domestic Employers Association. (n.d.). *The New York Domestic Workers Bill of Rights*. Retrieved from <http://domesticemployers.org/action/campaigns/>
- Herbert, R., Janeway, K., & Schechter, C. (1999). Carpal tunnel syndrome and workers' compensation among an occupational clinic population in New York State. *American Journal of Industrial Medicine*, 35, 335-342.
- Hicks, W. M., & Cooke, J. A. (1995). Workers' Compensation Insurance: As good as it gets. *Black Book - Aetna Life (& Casualty?): Becoming a growth company* [Market Research Report], 17-19. Retrieved from Business Source Complete database.
- Hilgert, J. A. (2012). Building a human rights framework for workers' compensation in the United States: Opening the debate on first principles. *American Journal of Industrial Medicine*, 55, 506-518.
- Hood, J. B., Hardy, B. A., Jr., & Lewis H. S., Jr. (2011). *Workers' compensation and employee protection laws in a nutshell* (5th ed.). USA: West Publishing.
- Kleinfeld, N. R. (2009, April 1). A world of hurt: Exams of injured workers fuel mutual mistrust. *The New York Times*, p. A1.
- Kleinfeld, N. R., & Greenhouse, S. (2009, March 31). A world of hurt: For injured workers, a costly legal swamp. *The New York Times*, p. A1.
- Looram, K. L., & Shultz, P. T. (1993, Winter). Managing workers' compensation medical costs: A state-by-state guide. *Employee Relations Law Journal*, 19(3), 251-267.
- Martino, K. (2007, September 7). Stop-Work Authority used eight times since July. *Business Journal (Central New York)*, 21(36), 12.
- McDonald, G. R., & McDonald, L. A. (1997, October). Trends in workers' compensation. *Trial*, 33(10), 52-59.

- McKinney's 1966 Session Laws of New York (Vol. 1). (1966). Brooklyn, NY: West Publishing.
- Mesh, C. (2006, August 31). Public pays if injured lose benefits. *Rochester Democrat and Chronicle*, p. A11.
- Minkowitz, M. (2011). *New York Workers' Compensation* (2nd ed.). USA: Thomson-Reuters.
- National Association of Social Workers. (Revised 2008). *Code of ethics of the National Association of Social Workers*. Retrieved from <http://www.socialworkers.org/pubs/code/code.asp>
- New York Civil Liberties Union. (2013, May 13). *NYCLU urges state lawmakers to provide basic labor protections to NY farmworkers*. Retrieved from <http://www.nyclu.org/news/nyclu-urges-state-lawmakers-provide-basic-labor-protections-ny-farmworkers>
- New York State Department of Labor. (n.d.). *Facts for domestic workers*. Retrieved from <http://www.labor.ny.gov/legal/laws/pdf/domestic-workers/facts-for-domestic-workers.pdf>
- New York State Insurance Rating Board. (2007, October 1). *New York workers compensation: Estimated impact of the elimination of PPD duration limits* [Exhibit F, Sheet 3A]. In 2007 General rate revision. Retrieved from <http://www.nycirb.org/2007/depts/actuary/a2007rr.pdf>
- New York State Workers' Compensation Board. (2008, December). *The impact of reform on the New York State workers' compensation system*. Retrieved from <http://www.bcnys.org/inside/wc/2008/WCB-Reform-Report.pdf>
- New York State Workers' Compensation Board. (2014, February 1). *2013 Annual report*. Retrieved from <http://www.wcb.ny.gov/content/main/TheBoard/2013AnnualReport.pdf>
- New York State Workers' Compensation Board. (n.d.a). *About us*. Retrieved from <http://www.wcb.ny.gov/content/main/TheBoard/factsht.jsp>
- New York State Workers' Compensation Board. (n.d.b). *Injured on the job? An employee's guide to workers' compensation in New York State*. Retrieved from <http://www.wcb.ny.gov/content/main/Workers/InjuredOnTheJob.pdf>
- New York State Workers' Compensation Board. (n.d.c). *The success of New York's 2007 workers' compensation reform*. Retrieved from <http://www.wcb.ny.gov/content/main/TheBoard/Post2007Reform.pdf>
- New York State Senate. (n.d.). *Bill S1743-2013*. Retrieved from <http://open.nysenate.gov/legislation/bill/S1743-2013>
- Perea, J. F. (2010). The echoes of slavery: Recognizing the racist origins of the agricultural and domestic worker exclusion from the National Labor Relations Act. *Ohio State Law Journal*, 72(1), 95-138. Retrieved from http://moritzlaw.osu.edu/students/groups/oslj/files/2012/04/72.1.perea_.pdf

- Prewitt, M. (2005, March 21). Expected arrests underscore worsening of insurance fraud. *Nation's Restaurant News*, 39(12), 4, 143.
- Rich, B. A., Farnham, H. P., & Parmele, G. H. (Eds.). (1918). Annotation – Injuries "arising out of and in the course of" employment within the meaning of the workmen's compensation statutes. In *Lawyers Reports Annotated 1918F* (pp. 896-918). Rochester, NY: The Lawyers Co-operative Publishing Company. Retrieved from <http://books.google.com/books>
- Roberts, L. (2005, December 22). Pataki's compensation "reforms" will hurt injured workers. *New York Amsterdam News*, p. 13.
- Rosenberg, E. (2012, October). *Workers' compensation in NYS: Did 2007 reforms make a difference?* Retrieved from http://www.cgr.org/reports/12_R-1677_WorkersCompensation.pdf
- Rosenfeld, E. (2007, January 29). Is this the year of workers' compensation reform? *Insurance Advocate*, 118(Supplement), S3-S14.
- Ruquet, M. E. (2007, March 5). New York announces WC reform package. *National Underwriter/P&C*, 111(9), 24.
- Seller, C. (2013, May 13). Assembly acts to extend farm workers' rights. *Times Union*. Retrieved from <http://www.timesunion.com/local/article/Assembly-acts-to-extend-farm-workers-rights-4512637.php>
- Sengupta, I., Baldwin, M. L., & Reno, V. (2014, August). *Workers' compensation: Benefits, coverage, and costs, 2012*. Retrieved from http://www.nasi.org/sites/default/files/research/NASI_Work_Comp_Year_2014.pdf
- Shanker, R. (1983). Occupational disease, workers' compensation, and the social work advocate. *Social Work*, 28(1), 24-27.
- Smith, R. (2012). Immigrant workers and worker's compensation: The need for reform. *American Journal of Industrial Medicine*, 55, 537-544.
- Smith, R., & Goldberg, H. (2010, December). *Unity for dignity: Expanding the right to organize to win human rights at work*. Retrieved from <http://www.unitedworkerscongress.org/publications--reports.html>
- Spieler, E. A., & Burton, J. F., Jr. (1998). Compensation for disabled workers: Workers' compensation. In T. Thomason, J. F. Burton, Jr., & D. E. Hyatt (Eds.), *New approaches to disability in the workplace* (pp. 205-244). Madison, WI: Industrial Relations Research Association.
- Spieler, E. A., & Burton, J. F., Jr. (2012). The lack of correspondence between work-related disability and receipt of workers' compensation benefits. *American Journal of Industrial Medicine*, 55(6), 487-505.
- Spitzer, E. (2007, March 23). Workers' comp to reduce costs. *Filipino Reporter*, p. 37.

- Steenland, K., Burnett, C., Lulich, N., Ward, E., & Hurrell, J. (2003 May). Dying for work: The magnitude of US mortality from selected causes of death associated with occupation. *American Journal of Industrial Medicine*, 43(5), 461-482.
- Strunin, L., & Boden, L. I. (2004). The workers' compensation system: Worker friend or foe? *American Journal of Industrial Medicine*, 45, 338-345.
- Tarpinian, G., Tuminaro, D., & Shufro, J. (1997). The politics of workers' compensation in New York State: Developing a pro-labor strategy to defeat business-sponsored 'reform' and win increased protection for workers. *New Solutions*, 7, 35-45.
- Terrell, P. (2008). Workers' compensation. In T. Mizrahi & L. E. Davis (Eds.), *Encyclopedia of social work* (20th ed., Vol. 4, pp. 304-306). New York: Oxford University Press.
- The Public Policy Institute of New York State, Inc. (2012 October). *Revisiting the reforms*. Retrieved from <http://www.ppiny.org/reports/2012/Workers-Comp-Costs-Revisiting-the-Reforms.pdf>
- United States Bureau of Labor Statistics. (2014, April). *Revisions to the 2012 census of fatal occupational injuries (CFOI) counts*. Retrieved from http://www.bls.gov/iif/oshwc/cfoi/cfoi_revised12.pdf
- United States Bureau of Labor Statistics. (n.d.a). *Fatal occupational injuries in New York City 2012* [Data file]. Retrieved from <http://www.bls.gov/iif/oshwc/cfoi/tgs/2012/iiffw68.htm>
- United States Bureau of Labor Statistics. (n.d.b). *Fatal occupational injuries in New York (except N.Y.C.) – 2012* [Data file]. Retrieved from <http://www.bls.gov/iif/oshwc/cfoi/tgs/2012/iiffw36.htm>
- United States Bureau of Labor Statistics. (n.d.c). *Number and rate of nonfatal occupational injuries and illnesses by selected industry, all U.S., all ownerships, 2012 (numbers in thousands)* [Data file]. Occupational injuries and illnesses and fatal injuries profiles. Retrieved from <http://www.bls.gov/iif/data.htm>
- United States Bureau of Labor Statistics. (n.d.d). *Number and rate of nonfatal occupational injuries and illnesses by selected industry, New York, all ownerships, 2012 (numbers in thousands)* [Data file]. Occupational injuries and illnesses and fatal injuries profiles. Retrieved from <http://www.bls.gov/iif/data.htm>
- United States Bureau of Labor Statistics. (n.d.e). *Number of nonfatal occupational injuries and illnesses involving days away from work by selected worker and case characteristics and musculoskeletal disorder, all U.S., all ownerships, 2012* [Data file]. Occupational injuries and illnesses and fatal injuries profiles. Retrieved from <http://www.bls.gov/iif/data.htm>

- United States Bureau of Labor Statistics. (n.d.f). *Occupational safety and health definitions*. Retrieved from <http://www.bls.gov/iif/oshdef.htm>
- United States House of Representatives Committee on Education and Labor. (2008, June). *Hidden tragedy: Underreporting of workplace injuries and illnesses*. Retrieved from <http://workerscomphub.org/resources/hidden-tragedy-underreporting-workplace-injuries-and-illnesses>
- United States Social Security Administration. (2013). *Other social insurance programs: Workers' compensation* [Data file]. Annual statistical supplement (Table 9.B). Retrieved from <http://www.ssa.gov/policy/docs/statcomps/supplement/2013/9b.pdf>
- Witt, J. F. (2004). *The accidental republic: Crippled workingmen, destitute widows, and the remaking of American law*. Cambridge, MA: Harvard University Press.

Endnotes

1. Formerly workmen's compensation. The change in the name of the law (from workmen's to workers') in New York State occurred in 1978 as a recognition of women in the workforce (Minkowitz, 2011). For the sake of consistency, this paper will use the term "workers' compensation" to refer to historical as well as present-day policies and practices.

