Workers' compensation term paper examples

Literature, Russian Literature

Introduction

Workers' compensation is a state-mandated insurance program providing compensation and medical benefits to employees who have been injured or disabled during the course of work at the place of employment. In exchange for the compensation, the employees need to relinquish their right to sue their employers for negligence or for the damages caused by the injury (CULS, 2014). Workers' compensation laws also provide monetary benefits to the dependents of those workers who have died due to work-related accidents or injuries. Though the workers' compensation programs vary among states and jurisdictions, the common provisions include wage replacement monetary benefits in the form of disability insurance, reimbursement of medical bills and any other expense, incurred due to the work related injury, in the form of health insurance, compensation for economic loss due to the injury and benefits paid to the dependents of employees, who have been killed on work, in the form of life insurance (CULS, 2014). This essay will discuss worker's compensation in great detail touching upon the federal and state level statutes for workers' compensation in USA, its history, definition of compensable injury, workers' compensation fraud, its financial consequences and how that fraud can be addressed.

Federal and State Level Statutes for Workers' Compensation

There are different state and federal level statutes related to workers' compensation in USA. For instance, the Federal Employment Compensation Act provides workers' compensation to non-military federal employees (CULS, 2014). This act provides reimbursement of medical expenses caused by the injury during the work, two-third of the normal monthly salary to the disabled employees during the disability or more in case of permanent injury and compensation to the dependents of the employees killed on work. The Longshore and Harbor Workers' Compensation Act (LHWCA), on the other hand, provides workers' compensation to some specific employees of private maritime employers (CULS, 2014). Since black lung disease is common among workers exposed to coal dust, the Black Lung Benefits Act gives compensation to the miners suffering from pneumoconiosis or black lung disease.

History of Workers' Compensation

The history of workers' compensation dates back to as early as 2050 B. C. when the law of Ur enacted by Ur-Nammu, the king of the city-state of Ur, provided compensation to the workers for specific injury to their body parts, including fractures. The Ancient Arab law also provided similar compensation to workers. The development of English common law in the late Middle Ages and Renaissance provided a legal framework for workers' compensation that was in place in USA and Europe during the Industrial Revolution in the 18th and 19th century (Guyton, 1999). The workers' compensation system was then based on three principles; contributory negligence, the 'fellow servant' rule and the 'assumption of risk'.

The Three Principles

Contributory negligence protected the employers from giving any compensation to the injured employee if he or she was at fault for his injury. For instance, in the case of Martin v. the Wabash Railroad, when a freight conductor was badly hurt from a fall off the train, he did not receive any compensation despite a loose handrail being responsible for his fault as inspecting the train for faulty equipments was part of his job duty (Guyton, 1999). The 'fellow servant' rule protected the employers from giving any compensation to an injured employee if a fellow employee's negligence or action was responsible for the injury. The Farwell vs. The Boston and Worcester Railroad Company was an example of this rule as the worker injured was denied compensation on the ground that the negligence of a fellow worker, a switch tender employed in the same company, was responsible for his injury. The 'assumption of risk' was known as a death contract because as per this doctrine, the employees while joining a work position knew of the inherent risks and hazards that particular job involved, and hence, employers made the employees sign a contract in which the employees had to relinquish their right to litigation in case of injury before the beginning of their tenure (Guyton, 1999). Known as 'unholy trinity of defenses', these principles were not only restrictive but also involved troublesome method of enforcement, and hence it was a problem for common workers to win compensation for their injuries.

The Basic Model of Modern Workers' Compensation

It was none other than Otto von Bismarck who first provided the basic model for workers' compensation program that is in use in many countries including USA today. In 1884, Bismarck created the first model of modern workers' compensation by implementing Workers' Accident Insurance as part of a system of social insurance in Prussia. It was soon followed by the creation of Public Pension Insurance, which provided the employees down with non-job related sickness with a stipend, and Public Aid which provided compensation to those who were unable to work due to disability (Guyton, 1999). Compensation payable to employees for job-related injuries, medical care and rehabilitation all were covered under the system of social insurance.

Creation of Workers' Compensation in USA

In USA, the first workers' compensation law was enacted in 1911 in Wisconsin. After that, nine other states passed the law in the same year, and before the end of decade, 36 other states enforced the law. Mississippi was the final state to have passed worker's compensation law (Guyton, 1999). The workers' compensation laws in USA are loosely based on the original Prussian system. Industrial accidents being accepted as common phenomena, financial consequences are dealt with as expeditiously as possible. In USA, most employees injured at work have an absolute right to medical treatment and even monetary compensation in case of temporary or permanent disability. All the states in the US have made it mandatory for the employers to provide workers' compensation to their employees, both part-time and full-time.

The Definition of Compensable Injury

The definition of injury regarded as compensable has gone through many changes over the years. Injury, earlier referred as a sudden industrial accident, has now been defined as any job related harmful damage. Occupational Safety & Health Administration (OSHA) defines work related injury, fatalities and illnesses as those in which an event or exposure has led to the condition. Additionally, if an event or exposure exacerbates a preexisting injury or illness, then also it would be considered as work related (U. S. Department of Labor). Furthermore, OSHA has mandated the employers to prepare and maintain the record of serious occupational injuries including amputation, sprain, fracture and a cut and illnesses including skin disease, respiratory problems like pneumoconiosis and asthma and poisoning like solvent intoxication and lead poisoning. Not reporting or underreporting of injuries or illnesses creates a problem for the workers to get their due compensation, and many workers avoid reporting work-related injuries fearing retaliation of the employers. Hence, in order to protect the employees, OSHA prohibits employers from retaliating or discriminating against an employee for reporting an injury or illness (U. S. Department of Labor).

Workers’ Compensation Fraud

The basic foundation of workers' compensation system in USA is based on 'no fault insurance' in which injured employees do not need to prove that the injury is someone else's fault in order to recover the compensation benefits. Furthermore, since medical bills are reimbursed, and injured employees also receive a portion of their wages during the time they are unable to work due to disability, these compensations benefits have been subjected to fraudulence by many workers, employees and the third parties (CDI, 2014).

What is Workers’ Compensation Fraud?

Workers' compensation fraud takes place when an employee exaggerates the extent of his injury or simply concocts a falsified story to obtain workers' compensation benefits. However, the fraud goes far beyond simply exaggeration or misrepresentation of injuries. A slew of white collar people like lawyers and doctors are also involved in the cheating the system and false insurance claims. Employers also commit the fraud by underreporting their payrolls so that they receive lower premiums (CDI, 2014).

Types of Workers’ Compensation Fraud and Cases of Fraud

There are different kinds of worker’s compensation fraud. The most common type of fraud is committed by the employees. Dishonest employees often make bogus claims for injuries at workplace. Despite not being seriously injured, some dishonest employees in order to receive a part of their salary and insurance money claim that they are unable to work and thus, they sit idle at home or do a second job without notifying the employer or the insurance company. The biggest motive behind such fraudulence is free cash and free vacation. Yolandi Kohrumel and her father were sentenced to 1 year in jail for fraudulently collecting money from the insurance company against an injury occurred in workplace (SDCN, 2013). Kohrumel used to work as a store manager at Staples. Upon working for three months, she claimed that a heavy box fell on her toe and Kohrumel broke her toe in the workplace. She claimed that she was wheelchair bound. The insurance company paid $1. 5 million to Kohrumel as per the worker’s compensation disability act. Also, Kohrumel’s father claimed that he had to attend his daughter 24 hours a day and seven days a week due to her injury. He demanded a compensation of $324, 000 for looking after her between 2011 and 2013. However, after nine years, the insurance company discovered that Kohrumel was not only able to stand and walk but also could do lifting and other normal activities very easily. The insurance company submitted video evidence of her activities to expose her fraud (SDCN, 2013).

The worker’s compensation fraud, committed by the employers, accounts for the largest percentage of the fraud cases in terms of dollar value. Dishonest employers often report unsafe jobs as safe jobs. For example, a person operating a crane is shown as a file clerk while reporting to the insurance agency. Another most common one is the underreporting of the payroll. By underreporting payrolls, the employers can save a lot of insurance money by avoiding coverage for the employees. Covering only a part of the workforce, these employers hope that the insurance company or the state government will not find out about the fraud. This leaves workers exposed to injury without insurance. A California based company called ‘ Awesome’ underreported almost $8 million over the last few years. By misrepresenting the payroll, the kind of work performed and the loss history, the employers keep their insurance premium low (Craver, 2013). Some employers use other techniques to avoid high premium like setting up a new company to obtain insurance claim as the new company does not have any history of accidents. In Hanford, California, a person called Richard Escamilla Jr. used multiple fraudulent methods. He not only underreported the payroll and actual accident cases but also created a slew of new businesses to obtain insurance at a very low rate as the new companies had no history of accidents.

There are also frauds committed by white collar employees like the insurance agencies (agents), doctors and lawyers. In such cases, they exploit the advantage of being in good position in the whole worker’s compensation process. Doctors help the workers in inflating an injury and thus collecting more from the insurance company. Even in some cases, doctors in collusion with employees or employers may create phantom injuries (CAIF, 2014). Shady lawyers work with doctors and employees to create useless and forged treatment papers. For example, in 2013 Jerry Stage, the former CEO of Compensation Advisory Organization of Michigan (CAOM) along with George Bauer, the bookkeeper, was found guilty of worker’s compensation fraud. Stage was the CEO of CAOM from 1993 till his retirement in 2012. CAOM is a not for profit organization providing customer and administrative support to the Michigan worker’s compensation placement facility. CAOM collects data about the insurers licensed to sell the worker’s compensation insurance in Michigan and are not associated with the government. Stage embezzled around $2. 6 million over a ten year period, and Bauer helped with his accounting expertise to cover up the tracks (IJ, 2013). If found guilty in court, both probably will face up to 20 years of imprisonment with $2. 6 million to pay as damage.

Financial Consequences of Workers’ Compensation Fraud

The National Insurance Crime Bureau (NICB) has identified workers’ compensation fraud as one of the fastest growing insurance frauds in USA that has resulted in the financial loss of about $7. 2 billion a year (TIC, 2008). The workers’ compensation fraud involves a number of implications. First of all, if more false claims are made, then the insurance company needs to pay more insurance money to the employees and the employers. This would make the cost of insurance and the workers’ premiums go up. Ultimately, the cost of fraud is borne by the non-fraudulent customers. Also, some workers may lose their jobs as a company may face financial pressure due to high level of workers’ compensation and try to compensate that by either retrenching the number of employees or by reducing the overall salary. In case of frauds committed by the employers, employees face the danger of working without insurance (CAIF, 2014). They may not receive compensation in case of an injury. High amount of workers' compensation also diminishes the income of a company making the business less profitable. This would lower the productivity of the employees and may force the business to shut down. The practice of workers' compensation fraud makes it harder for honest employers to compete against dishonest businesses as dishonest employers may lower their costs by avoiding workers' compensation premiums. Some of the workers' compensation programs are run by government agencies, and hence, cost increase in those programs due to frauds will result in the wastage of taxpayers' money.

How to Avoid Worker's Compensation Fraud

Workers' compensation fraud affects all the people. Employers and employees get affected directly, but the other parties like insurance companies, the government and tax payers also get indirectly affected. First of all, employees need to be responsible. They should claim only the due amount and should avoid going to shady lawyers and dishonest doctors. Also, it is the responsibility of a fellow worker to report suspicious fraudulent behavior of a colleague to the employer (CAIF, 2013). Employers should try to create a happy and safe workplace to reduce the chances of an employee committing workers' compensation fraud. A zero tolerance policy should be maintained against fraud, and harsh measures should be taken in the cases of fraudulent behavior or act. The management might give rewards for the reporting of fraud to encourage employees to report suspicious behavior quickly.

Conclusion

Workers’ compensation is necessary to protect the employees from work-related damages. Workers’ compensation is paid to an employee when he gets seriously injured on the job and in case if he dies from the injury, his dependents receive compensation. Based loosely on the model of Prussian system of social insurance, the compensation program in USA follows the no-fault insurance. Since workers’ compensation program pays a part of the salary to the injured workers during the time they are unable to work and also pay medical expenses incurred by the injury, many people try taking undue advantage of the system. Employees, employers and even white collar employees like lawyers and doctors collude in committing the workers’ compensation fraud scams. This can only be avoided if both the employees and employers become cautious and responsible. Employers should encourage the employees to report frauds by providing rewards. These measures can reduce the overall number of frauds.

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