

The Middle Class of Workers' Compensation

By Angela M. Hardway

Being an injured worker in Ohio's workers' compensation system is difficult and being an employer is frustrating. But being the injured worker *and* the employer is nearly impossible. The people who fall into this category are mainly small-business owners, sole proprietors, and the self-employed individual. These people generally have no or a small number of employees and have little knowledge of how workers' compensation works.

When these employers become the injured worker, they tend to rely on the Bureau of Workers' Compensation (BWC) because they've paid into the state fund. Now, they believe the BWC will take care of them, ensuring they receive their benefits. After all, they paid for them! Yet many are left navigating a system that will dispute the allowance of claims, condition, treatment and payment of lost wages. Since these claims are state funded, the BWC heads the initial process. This is the double-edged sword these small-business owners and self-employed individuals are facing if injured on the job.

Imagine this scenario: a small-business owner is injured while performing work duties. The small-business owner is also the only employee of the company. The injury is serious enough to prevent him/her from being able to work. The business owner is now the injured worker and goes to the BWC for coverage of medical bills and lost wages. Lost wages would be paid in the form of temporary total disability (TTD) at 72 percent of the injured workers' established full weekly wage. Should the injured worker need those benefits long enough, the rate then drops to 66.66 percent. During that same time, the injured business owner will not be able to perform any kind of work. If they do or appear to do work, then they

might be investigated for fraud. Now the injured worker has a business left with no employee and to avoid loss of his/her business, he/she will have to hire someone to do their job.

If the injuries are severe and don't resolve quickly – or the injured worker discovers he/she has a more severe injury than originally diagnosed – the injured worker has to request additional diagnoses from the BWC. If, for example, a self-employed plumber falls down some stairs while performing work duties. At the hospital, he is initially diagnosed with a knee sprain, released on crutches and unable to work for one month. During that month, his knee worsens and his back begins causing him pain. The doctor orders diagnostics for the knee and physical therapy for his back. Reasonable? Not necessarily. Because of the initial diagnosis, he can only have treatment rendered on the sprain.

In order for the plumber to receive treatment for his back, the physician will need to provide causal support for the treatment. The BWC, ironically, will have the request reviewed by a state medical examiner. If they deny the request, then the injured worker will need to appeal to the Industrial Commission, which can take several months.

During this lengthy delay, the injured worker continues to be unable to work, affecting wages paid as TTD. TTD cannot be paid for conditions not allowed in the claim unless the allowed condition independently renders the injured worker disabled.

Now, to be fair, these same issues face all injured workers and are challenging. But for the small-business owner, who made payments into the state fund for coverage in case of injury, it is shocking to find out that the BWC isn't there to support them

as injured workers. In fact, they protect the state fund more often. In essence the small-business owner has paid the BWC to fight against their claim. As this happens, the small business, in addition to the injured worker, suffers.

This seems intrinsically unfair. Yes, there is the need for checks and balances, but should this be at the cost of small business? Shouldn't there be some protections in place to prevent the small-business owner from the loss of their business due to suffering an injury? Not every injury is permanently disabling. And these unnecessary delays in treatment because of the BWC process are detrimental to the business, if not catastrophic. The small-business owner is slowly being consumed in the bureaucratic system that claims to be protecting injured workers and employers (and sometimes they're both).

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