

# The Human Cost Of Workers' Comp Reform



Earlier this month, we looked at two articles in ProPublica's and NPR's ongoing series about the dismantling of workers' compensation in the United States. As advocates for injured workers, including those harmed in the workplace, we are greatly interested in these articles and believe that it is important for everyone to know about the changes to workers' comp systems across the nation.

This article provides an overview of ProPublica's most recent entry in its series, titled [\*The Fallout of Workers' Comp 'Reforms': 5 Tales of Harm\*](#), and offers a list of resources where you can learn more about this issue.

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## The Story So Far



Workers' compensation has been under fire across the United States for more than a decade. ProPublica's examination of this issue found that cuts and restrictions imposed on workers' comp have "gone so deep in some states that judges who hear workers' comp cases, top defense attorneys for companies and even the father of the modern workers' comp system say they are inhumane."

Michael Grabbell, author of the latest entry in the ProPublica series, elaborates:

"In some states, the cuts [to workers' compensation] have been so drastic that injured workers have plummeted into poverty, losing their cars and even their homes. In others, workers spend years battling insurance companies for the surgeries, prescriptions and basic help their doctors recommend."

Below, we examine some of the specific restrictions and cuts that have affected injured workers and left them searching for answers.

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## **Arbitrary Limits Leave Injured Workers With Few Options**



In many states, workers' compensation will pay temporary wage benefits until a worker's injury or illness subsides. Unfortunately, many states recently implemented caps on how long injured workers can receive such benefits. Even if a worker has not fully recovered from an illness or injury, benefits are shut off after this arbitrary cap is reached. This trend is widespread, but still growing, according to ProPublica:

"Today, 22 states set arbitrary time limits on temporary wage benefits, according to data collected by the Workers Compensation Research Institute."

This includes West Virginia, where a factory worker tore his rotator cuff and ruptured his bicep at work. His doctor said that the worker should have surgery immediately or he could suffer permanent damage. The insurance company would not approve surgery and made him wait six weeks before sending him to another doctor to get a second opinion. The second doctor agreed with the first doctor's assessment. The insurance company waited five more weeks before authorizing surgery. Two years after the surgery, the worker still suffers from the effects of the injury. But in West Virginia, the employer is required to pay for treatment for only two years. Today, it is no longer responsible for any medical care for the worker, who has had to use Medicaid and food stamps just to survive.

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## **Putting Important Decisions In The Hands Of Anonymous Physicians Who Never Meet With The Patient**



Another major change that has started to sweep through the nation involves the use of third-party medical reviewers. These reviewers are independent physicians who examine a patient's medical records and then make recommendations about what care options are allowable. These doctors, after assessing only documents or conducting extremely brief exams, make decisions that affect a patient's entire life and well-being. These doctors often have the last say on care options – including medical treatment, home health care and modifications such as the installation of ramps – yet they remain removed from the process and do not see the real-life impact their decisions have on patients.

ProPublica's article examines the case of a California man whose care fell into the hands of an independent medical reviewer. Due to being paralyzed in a tanker truck accident, the man requires a wheelchair. His home, however, was not wheelchair-accessible. While his insurer approved the construction of a ramp, the doorway to his home was too narrow for his wheelchair to fit through. When the man requested that his insurer pay for the doorway to be widened, the insurer denied his claim and sent it to an independent medical reviewer.

The reviewer, who had never met the patient, sided with the employer. The man continued to use all options available to

him – winning every step of the way – but the insurer kept denying the claim and citing the opinion of a medical professional who had never met the paralyzed man. It was only after a local TV station aired a story about the man's plight that the insurer took action and widened the doorway so the man could actually get into his home.

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## **Using Pre-Existing Conditions To Evade Responsibility**



A North Dakota forklift driver found out firsthand about another tactic that is growing in popularity and being used to deny workers' comp claims – pinning blame for an injury on pre-existing conditions. When the driver bent down to remove a tag from the load she was hauling, she felt an “ungodly pain” in her back. Even though the woman had previous issues with her back, an MRI from years prior showed no problems with the part of her back where the injury occurred. During the course of her treatment, the medical director of the state's Workforce Safety & Insurance agency, as well as a second doctor, considered this and ultimately attributed her injury to the workplace incident. This meant that the driver was eligible for workers' comp benefits.

The employer then asked – the article implies that it did not so much “ask” as it “told” – the agency to reconsider. This meant that an independent medical reviewer would get involved. The reviewer never met with the driver, but quickly attributed

her injury to pre-existing back problems. Suddenly, the woman was no longer eligible for benefits. As the article puts it:

“[The driver] came face to face with a growing trend in workers’ comp – the aggressive effort to pin workplace injuries on pre-existing conditions. In recent years, North Dakota and several other states have increasingly allowed insurers to deny claims by saying that work injuries only aggravated existing conditions caused by aging, prior injuries or the structure of workers’ bodies.”

The outcome is, unfortunately, not surprising. More and more, states are doing anything they can to limit their responsibility to pay for work injuries, even though this further harms those they are required to protect – injured workers.

ProPublica explains:

“In 2008, [agency employees] told auditors that their bosses were directing them to look for reasons to deny claims. They reported a recent ‘shift in management focus to a more aggressive and in-depth search for prior injuries or pre-existing/degenerative conditions, which could possibly reduce [the agency’s] liability for the injury.’”

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## **You Want To Choose Your Doctor? 37 States Say ‘Too Bad.’**



Even when treatment is authorized, nearly 75 percent of states

allow employers to retain control of the process by limiting injured workers' choice of physician. ProPublica points out that:

"Eighteen states now allow employers to select the physician who treats their injured workers at least initially, according to the Workers Compensation Research Institute. And another 19 states require many workers to choose from a list of doctors – sometimes as few as four – approved by their state, insurer or employer."

Some states, such as Montana, go as far as giving employers and insurance companies that accept a claim the ability to dictate which doctor can carry out a patient's care. They can also change the patient's doctor on a whim, which is what happened to another man in ProPublica's article.

In 2012, the man, a mechanic, injured his foot and went to a podiatrist, who recommended a cortisone shot. His insurer made him go to another doctor, who recommended the same cortisone shot. The insurer then changed the man's treating physician. This third physician also agreed with the previously recommended course of treatment and referred the mechanic back to the podiatrist he had previously gone to. His insurer would not approve this referral and instead made him go to an orthopedic surgeon nearly 200 miles from his home. Upon examining the man, the surgeon became the fourth medical professional to recommend that he receive a cortisone shot.

Despite this, the insurance company still would not authorize the shot for the man. At this point, two years had passed from the date of the original injury and the damage was done. What should have been a quick and easy fix remained an ongoing problem because the insurance company did not want to pay for one cortisone shot. According to the mechanic, the result is that he is "43, and I walk like I'm 80."

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## Tell Your Story And Spread The Word



If you have been injured in the workplace or suffer from a workplace illness, now is the time to speak up. By [sharing your story](#) with ProPublica, you can help create a more complete picture of how workers' compensation in America has changed. The more stories that are shared, the more visibility this important issue will gain. More than 12,000 people have already filled out ProPublica's easy-to-use form. If you are hesitant to tell your story, know that ProPublica promises that it will "never share your personal information without your permission."

Even if you do not share your story, you can still help get the word out about this issue. Please share this blog (easy to do via our Facebook page) and the ProPublica articles on social media outlets or via email so that as many people as possible can learn about what is happening to the workers' compensation system in the United States.

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## Learn More About The Attack On Workers' Comp

We encourage you to read ProPublica's [article](#) in its entirety and to look at all of the other well-researched stories that ProPublica has published regarding this topic. Our thanks to ProPublica for shedding light on this important topic.



*For more on the dismantling of workers' compensation in the United States, check out the following resources:*

- **Workers' Compensation Under Fire:** Our previous post that discusses this series of articles and examines how Pennsylvania stacks up to other states around the country
- [Insult to Injury – America's Vanishing Worker Protections](#): The hub of ProPublica's ongoing investigation
- [The Demolition of Workers' Comp](#): The first article in ProPublica's series, referenced in our previous entry
- [How Much Is Your Arm Worth? Depends On Where You Work](#): The second article in ProPublica's series, also referenced in our previous entry
- [Podcast: Reporting on Workers' Comp](#): Hear more about these stories directly from author Michael Grabbell