Chapter 2

A Comparative Legal Analysis of Worker's Rights Following Occupational Injuries and Illnesses in Mexico and the United States

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Summary

This chapter offers a comparative analysis of workers' compensation in the United States and Mexico. It begins with a brief historical overview of each country's workers' compensation system and its legal foundation. The analysis then addresses the scope of coverage, benefit structures, and the claim administration process while underlining key differences in each country's system. The chapter also discusses the funding structures highlighting the payroll-based contributions in Mexico and the employer purchased insurance in Mexico. It concludes with a brief discussion of significant challenges faced by each country's system.

Introduction

Work-related accidents or occupational illnesses can significantly impact the lives of the injured employees and their families. Depending on the severity of the injuries, the employee may be temporarily or permanently unable to return to work. In more severe cases, the accident results in the employee's death, leaving their family to grieve their loved one while simultaneously facing financial burdens. In many instances, families rely on the benefits provided through the workers' compensation system to obtain financial assistance during this time of need.

Workers' compensation systems, or *seguro de riesgos de trabajo* (as it is known in Mexico), offer essential benefits and provide a sense of security to employees and their families in the aftermath of a work-related accident or an occupational illness. In the United States, each state administers its own workers' compensation laws, regulations, and requirements. In general, workers' compensation is a no-fault system designed to provide benefits and support to employees who sustain a work-related injury in the course and scope of their employment or develop an occupational illness arising out of their job duties. To elaborate further, as a no-fault system injured employees can receive benefits after sustaining a work-related injury without the need to establish fault. However, there are a few exceptions. If the injured worker is intoxicated, engaged in horseplay or involved in an act of violence, the injuries sustained may not be covered under workers' compensation, in accordance with applicable state laws. Further, the phrase *course of employment* is a legal concept which "refers to the time, place, and circumstances under which an accident occurred." The term includes an accident that occurs "within the period of employment, at the place where the employee reasonably may be in the performance of the employee's duties and while the employee is fulfilling the employee's duties or is engaged in something incidental thereto." This generally excludes injuries sustained while traveling to and from the place of employment.

Having defined workers' compensation system in the United States, it is essential to examine Mexico's system, which is characterized by a significantly different legal framework and administrative process. In Mexico, *riesgos de trabajo* (work-related risks) are defined at the federal level under the *Ley Federal del Trabajo* (Federal Labor Law). Under Article 473 of the Ley Federal del Trabajo, riesgos de trabajo are defined as work-related accidents or occupational illnesses that employees are exposed to in the course of, or in connection with their job duties. Article 474 of the Ley Federal del Trabajo expands this definition by stating that work accidents include "any organic injury or functional disturbance, immediate or subsequent, or results in death, produced suddenly in the course of or in connection with work, regardless of the time and place in which it occurred." Additionally, unlike the United States, which generally excludes injuries sustained while commuting to the workplace, Mexico's definition is broader and expressly includes accidents occurring while the employee is traveling between their residence and place of employment.

This chapter provides a comparative analysis of the workers' compensation systems in Mexico and the United States, by examining the historical background, underlying legal framework, the extent of coverage and available benefits, claims administration process and regulatory oversight, funding mechanisms, and concludes with general overview of key challenges.

Historical Background

United States

In the United States, the enactment of the Federal Employer's Liability Act (FELA) in 1908 marked the first significant federal initiative to address workplace injuries. FELA was created to protect and compensate railroad workers who are injured in the course of their employment as a result of their employer's negligence. Under FELA, an employer is liable if it is determined that its negligence contributed, in whole or in part, to a railroad worker's injuries. The Supreme Court held in *Rogers v. Missouri Pacific R. Co.*, 352 US 500 (1957), that under FELA, an employer may be held liable if the employer's negligence contributed, even the slightest, in producing the employee's injury. However, if the injured railroad worker is unable to establish their employer's negligence contributed to their injuries, then the worker has no remedy under FELA. Additionally, an injured railroad worker who is not eligible to receive benefits under FELA has no recourse under state workers' compensation laws.

A few years after the adoption of FELA, federal legislation was introduced in 1916 to extend workers' compensation benefits and expand the scope of covered employees. The Federal Employees' Compensation Act (FECA) was enacted to provide workers' compensation benefits to civilian federal employees who sustained work-related injuries or developed occupational illnesses. FECA is a no-fault system and does not require covered employees to establish that their injuries resulted from their employer's negligence.

In 1911, Wisconsin became the first state to establish a state-administered workers' compensation system. Wisconsin implemented a no-fault workers' compensation system. By 1921, all but six states had enacted workers' compensation law. The remaining states adopted workers' compensation laws by 1949. However, despite enacting workers' compensation legislation, Texas is the only state that does not require employers to participate in its workers' compensation system. Consequently, if a Texas employer decides to not participate in the state's worker's compensation system, an injured employee may file a personal injury lawsuit after a work-related injury or illness. In the event of a lawsuit, an employer that has elected not to participate in the state's workers' compensation system is barred from asserting common-law defenses based on the employee's own negligence, the negligence of a fellow employee, or the injured employee's assumption of the risk of injury or death.

Today, the majority of workers' compensation benefits are administered at the state level, with each state enacting its own laws, regulations, and administrative procedures. These benefits typically include income replacement, medical treatment for the work-related injuries or occupational illness, and vocational rehabilitation services. At the federal level, the Federal Employees' Compensation Act (FECA) and the Federal Employers' Liability Act (FELA) remain in effect, providing benefits to federal civilian employees and railroad workers engaged in interstate commerce, respectively.

Mexico

In Mexico, Article 123 of the Mexican Constitution of 1917 codified a broad range of labor rights, including the eight-hour workday, the establishment of a minimum wage, and the guarantee of equal pay for equal work. In 1931, the Ley Federal del Trabajo (LFT, Federal Labor Law) was enacted to implement the principles established in Article 123 of the Mexican Constitution.

On January 19, 1943, under the presidency of Manuel Ávila Camacho, the Ley del Seguro Social (LSS, Social Security Law) was enacted. This law established five branches of social security coverage, including the *Seguro de Riesgos de Trabajo* (SRT, Work Risk Insurance), and provided the legal framework for the creation of the *Instituto Mexicano del Seguro Social* (IMSS, Mexican Social Security Institute). IMSS commenced operations on January 1, 1944, marking the beginning of Mexico's federally administered social security system.

The *Seguro de Riesgos de Trabajo*, through IMSS, offers benefits to employees who sustain work-related injuries, develop an occupational illness, or are involved in a commuting accident between their residence and place of employment. These benefits include medical care, prescription medication, and wage replacement payments for employees who are deemed temporarily or permanently disabled. Survivor benefits are also provided to eligible dependents in the event of a fatal work-related accident or occupational illness. As of 2022, a total of 21,178,388 workers were covered under the *Seguro de Riesgos de Trabajo* (Occupational Risk Insurance).

In 1959, the *Instituto de Seguridad y Servicios Sociales de los Trabajadores del Estado* (ISSSTE, Law of the Institute for Social Security and Services for State Workers) was established pursuant to the Ley del Instituto de Seguridad y Servicios Sociales de los Trabajadores del Estado (Law of the Institute for Social Security and Services for State Workers). This law was enacted to address the specific social security needs of public sector employees in Mexico. The statute is governed by its own legal framework and operates and independent occupational risk insurance system for public sector employees. Today, the majority of state and federal government employees are covered by LISSSTE, although some states have established independent social security systems for state public employees.

Legal Framework

United States

As previously noted, workers' compensation benefits in the United States are primarily administered at the state level. All states have established worker's compensation agencies or systems tasked with the enforcement and regulation of their respective workers' compensation laws. This includes establishing rules and guidelines for the handling of claims, and ensuring that injured workers receive appropriate benefits. State agencies are also tasked with overseeing the dispute resolution process and facilitating the resolution of disputes between workers and employers or their insurance providers. In many cases, the agencies also provide resources to employers and workers aimed at promoting workplace safety and preventing work-related accidents.

In most states, employers are required to obtain workers' compensation insurance from private insurers or, when coverage is unavailable, from a state-administered fund. These state-administered funds are government-operated organizations designed to provide workers' compensation insurance coverage. Alternatively, a few states allow employers the opportunity to elect to self-insure, provided the employee meets the eligibility criteria established by state law. A self-funded plan is a form of workers' compensation coverage in which the employer assumes the financial risk for providing benefits to its employees. Ultimately, the types of workers' compensation coverage available vary by state. In North Dakota and Wyoming, employers can only obtain workers' compensation coverage from the state fund. In Ohio and Washington, employers must either purchase insurance from the state fund or, if deemed eligible, operate a self-insured plan.

In Texas, private-sector employers are not required to purchase workers' compensation insurance. Private-sector employers have the option to subscribe to the state's workers' compensation system, while public-sector employers are required to provide coverage. A private-sector employer that decides not to participate in the state's workers' compensation system is referred to as a non-subscriber. As a non-subscriber, the employer is predisposed to a civil lawsuit as an injured worker may file a personal injury claim after suffering a work-related injury or developing an occupational illness. According to a 2022 study conducted by the Workers' Compensation Research and Evaluation Group, approximately 75% of private sector employers in Texas participate in the state's workers' compensation system.

Federal Level

In 1949, the Federal Employees' Compensation Act (FECA) was substantially revised to align more closely with state workers' compensation systems, including the adoption of broader definitions and standardized benefit frameworks. At the federal level, the Office of Workers' Compensation Programs (OWCP) is responsible for administering benefits to federal employees under the four distinct programs. The four programs are: the Division of Federal Employees' Compensation (FECA), the Division of Longshore and Harbor Workers' Compensation, the Division of Coal Mine Workers' Compensation (Black Lung Program), and the Division of Energy Employees Occupational Illness Compensation. Each division provides coverage for a distinct group of employees. However, most civilian federal employees receive workers' compensation benefits under the Federal Employees' Compensation Act (FECA). FECA provide coverage for Federal Bureau of Investigation (FBI) agents, park rangers, and postal workers. Active-duty military members are not covered under FECA because they are covered under the Veterans Benefits Act through the Department of Veteran Affairs.

While workers' compensation laws vary by state, national organizations such as the National Council on Compensation Insurance (NCCI) and the American Property Casualty Insurance Association (APCIA) which provide guidance and promote uniformity nationwide. These organizations help coordinate state level insurance practices, encourage standardized reporting, and provide resources for regulatory compliance.

Mexico

As previously noted, the Seguro de Riesgos de Trabajo is administered by the Instituto Mexicano del Seguro Social (IMSS, Mexican Social Security Institute). IMSS is headed by a Director General, appointed by the Mexican President. The current Director General is Zoe Robledo Aburto. He was appointed by President Andres Manuel Lopez Obrador (AMLO) on May 22, 2019, and was reappointed by President Claudia Sheinbaum on October 1, 2024.

Mexico, like state workers' compensation systems in United States, operates under a no-fault system, which means that a worker who sustains a workplace injury or develops an occupational disease does not need to establish the employer acted negligent in order to receive benefits. However, unlike the United States, Mexico does not utilize private insurance companies for workers' compensation coverage. Instead, Mexican employers are required to participate in federal social security system, which provides benefits and treatment for work-related injuries, occupational illnesses and survivor benefits. Under Article 15 of the Ley del Seguro Social, all formal-sector employers are legally required to register their employees with IMSS and to submit social security contributions based on the employee's salary and job risk classification. This requirement applies to all employees, including full-time, part-time, and temporary positions. Failure to register employees or to accurately report wages may result in administrative fines, financial liability for medical expenses and pension payments, and legal actions.

The financial obligations associated with this coverage are governed by Articles 72, 73 and 75 of the Ley del Seguro Social. By complying with this requirement, the employer is generally not held liable for a work-related accident or occupational illness, as benefits are provided through IMSS. Furthermore, Articles 474 to 485 of the Federal del Trabajo (Federal Labor Law) outline the employer's responsibility for workplace safety and health including requirements related to work-related accidents and occupational diseases.

Claims Process and Administration

United States

In the United States, a worker must notify their employer of a work-related injury or occupational illness within a specified period. Although the reporting timeframe varies across states, most require workers to report injuries or illnesses within 24 hours to 30 days. Once the employer is notified, they are required to promptly report any work-related injuries or illnesses to their workers' compensation insurance carrier and a claim is created. This reporting obligation applies even when the employer has reason to believe the worker's injury or illness may not be work-related. After the employer reports the accident to the worker's compensation insurer, the injured worker will be referred for a medical evaluation with an authorized physician within the insurer's network. The physician will conduct an assessment of the worker to determine whether the injury or illness is work-related. The physician will also assess the severity of the condition, and the worker's capacity to return to work with or without restrictions. For example, an employee who sustained an arm injury may be deemed fit to return to work with restrictions to refrain from carrying or lifting objects weighing more than ten pounds. If the employer cannot accommodate the employee's work restrictions, the employee will not be able to return to work. As a result of the worker's inability to work, the workers' compensation insurance carrier of the employer will provide Temporary Total Disability (TTD) benefits to the worker, in accordance with the waiting periods established by state law.

However, if the physician determines the worker's injury or illness is not work-related, the claim is denied. Once the claim is denied, the worker's access to medical treatment becomes limited as they will likely need to assume the financial responsibility for care. Nevertheless, in California, an injured employee may still be able to receive medical treatment despite the claim denial. A medical provider may offer to treat the worker on a lien basis, agreeing to defer payment unless the claim is later accepted. Medical treatment liens may also cover transportation services and translations services related to the care provided to the injured employee. The lien process is governed by the California Labor Code and overseen by the California Workers Compensation Appeals Board. To obtain compensation through the lien process, the medical provider will need to file a lien application with the California Department of Industrial Relations (DWC) and pay the $150 filing fee. Failure to pay the filing fee will result in the lien being unenforceable, regardless of whether the claim is later accepted.

In the majority of states, injured workers have the right to request an independent medical examination after the denial of a workers' compensation claim. Additionally, in certain cases, the denial of a claim prompts an employee to retain legal representation to assist in navigating the appeal process. However, an injured worker has the right to hire an attorney at any stage of the claim process.

Mexico

In Mexico, the employer is required to notify to the Instituto Mexicano del Seguro Social (IMSS) of any workplace injury within 72 hours of becoming aware of the incident. This reporting requirement is mandated by federal law (Ley del Trabajo) and by IMSS regulations. As part of the reporting process, the employer must submit a form titled Aviso de Atención Médica y Calificación de Probable Riesgo de Trabajo (ST-7) to IMSS. If the employer fails to report the injury to IMSS, the employee can report the injury directly to IMSS and obtain medical care. The employer must also submit a written report to the Secretaria del Trabajo y Previsión Social (STPS) detailing the incident within 72 hours of the occurrence.

In contrast to the United States, the Instituto Mexicano del Seguro Social (IMSS) serve as both the insurer and the medical provider for work-related injuries and occupational illnesses. Once the injury is reported, the employee will undergo a medical evaluation by an IMSS-authorized medical professional. After the evaluation, the physician issues a Certificado de Incapacidad Temporal Inicial por Probable Riesgo de Trabajo (Certificate of Initial Temporary Disability due to Probable Occupational Risk), which certifies the worker's temporary incapacity due to a probable occupational risk. At this stage of the process, it remains undetermined whether the worker's condition is work-related. The physician will also provide the worker with an Aviso de Atención Médica Inicial y Calificación de Probable Accidente de Trabajo (Notice of Initial Medical Attention and Classification of Probable Work-Related Accident), which must be completed by the employer as part of the occupational risk assessment process. Once completed, the worker must submit the form to Salud en el Trabajo (ST, Occupational Health), a department within IMSS responsible for evaluating a worker's functional capacity, including long-term effects of the injury or illness.

If the injured employee does not agree with medical evaluation conducted by the IMSS physician, the employee may request a second opinion. To initiate the dispute resolution process, the employee must file a formal disagreement with IMSS. The employee also has the option to file a claim through the Junta de Conciliación y Arbitraje (JCA, Labor Conciliation and Arbitration Board). La Junta is a tripartite tribunal responsible for resolving labor disputes between employees and employers.

Coverage and Benefits

United States

In the United States, workers' compensation coverage generally extends to employees in both the private and public sectors, while independent contractors are ordinarily excluded. Once the injury or illness is reported to the employer's workers' compensation insurance carrier, a claim is created. The workers' compensation carrier will then need to make a determination to accept or deny the claim. The timeframe to make the determination is governed by state law and generally ranges from 14 to 30 days.

Once the claim is accepted, the injured worker is eligible to receive benefits under the worker's compensation system. These benefits generally include wage replacement payments, medical treatment (including doctor's visits, hospital stays, prescribed medications, surgeries, and physical therapy) and vocational rehabilitation services. However, coverage for certain conditions such as carpal tunnel syndrome and psychological disorder varies by state. In Arkansas, Georgia, and Mississippi, psychological injuries are generally not compensable under workers' compensation unless the injury stems directly from a physical work-related injury. Similarly, in Texas, the psychological injury is compensable under workers' compensation only if it stems from a definite, identifiable, work-related incident. A Texas employee experiencing general stress, anxiety, or burnout without a defined occupation cause, are not covered under the state's workers' compensation. However, a narrow exception exists for first responders under Section 504.019 of the Texas Labor Code. First responders diagnosed with post-traumatic stress disorder (PTSD) do not need to prove a physical injury occurred, provided the condition arises from a work-related traumatic event.

At the federal level, compensability for carpal tunnel syndrome under the Federal Employee's Compensation Act (FECA) is contingent upon a medical diagnosis and a proven causal relationship to the worker's employment. The employee must timely report the condition and provide medical evidence that establishes a causal relationship between the carpal tunnel syndrome and their job duties. Additionally, under FECA, psychological conditions may also be covered. To be eligible for workers' compensation coverage, the psychological condition must be work-related, involve a stressor that is factual and compensable, and supported by medical evidence. Emotional reactions to personnel actions are not covered unless the employer's actions were later determined to be erroneous or abusive.

Temporary Total Disability (TTD)

Injured employees who are unable to return to work may be entitled to receive Temporary Total Disability (TTD) benefits, which provide wage replacement payments. However, before benefits are payable, the waiting period mandated under applicable state law must elapse. The waiting period duration differs by state. States such as California, Illinois, and Oregon have adopted a three-day waiting period. While other states, including Texas, Florida, and New York, adopted a seven-day waiting period. In general, employees eligible for TTD benefits receive a percentage of their full pre-injury wages. With limited exceptions, the majority of states pay approximately 66% of the worker's pre-injury wages and have adopted maximum benefit amounts. Generally, the workers' compensation insurance carriers are responsible for issuing benefit payments, not the employer.

In certain cases, however, the waiting period can be waived, but the requirements for such waivers vary across states. In California, the three-day waiting period is waived when an employee is unable to work for more than 14 days. In other states, like Texas, Oregon, Iowa, an injured employee will only receive compensation for the initial seven-day waiting period if the disability extends more than 14 days. However, in Nebraska, an injured employee will not receive retroactive payment for the seven-day waiting period unless the disability period is more than six weeks or 42 days. Since the disability period of an injured employee does not typically exceed 42 days, the waiting period is rarely waived.

Benefits will continue until the injured worker is medically released to return to work. The employee may be medically released with restrictions that the employer is capable of accommodating, released without any work restrictions, or has exhausted the number of allowable weeks by statute. Many states have established specific limits on the duration of TTD benefits. In Hawaii, the duration of TTD benefits is limited to a maximum of 26 weeks. In California, TTD benefits are limited to 104 weeks within a five-year period from the date of the injury. In Tennessee, TTD benefits are limited to 450 weeks. Meanwhile, Ohio law requires a reassessment after 200 weeks of TTD benefits to determine if the injured worker's disability is permanent. Both Illinois and Arizona do not impose a statutory cap on the duration of TTD benefits provided the worker remains disabled and has not reached maximum medical improvement (MMI).

Temporary Partial Disability (TPD)

An injured worker who is released to return to work on a limited or part-time basis, may be eligible for Temporary Partial Disability (TPD) benefits. Since the employer is still receiving partial wages, TPD benefits equal to two-thirds of the difference between the worker's pre-injury and post-injury weekly earnings.

Permanent Partial Disability (PPD)

Upon conclusion of medical treatment, an assessment is conducted to determine whether the employee has sustained any permanent impairment due to the work injury or illness. A worker who suffers permanent impairments but remains capable of working in some capacity may be entitled to receive Permanent Partial Disability (PPD) benefits. The method for calculating PPD benefits varies significantly by state and is considered a substantial variation among state's workers' compensation systems. Approximately 43 states use a scheduled-based system to calculate PPD benefits which assigns compensation values to specific body parts, such as the loss of a finger. An unscheduled condition generally includes injuries to the head, spine, and internal organs. The calculation of PPD benefits for unscheduled conditions generally adheres one of four principal approaches: impairment-based approach, loss-of-earning-capacity approach, wage-loss approach, or a bifurcated approach. The most commonly used method is the impairment-based approach, in which compensation is based on the individual's impairment. The loss-of-earning-capacity approach considers the injured worker's future earning losses to determine the appropriate benefit amount. The wage-loss approach assesses the actual or ongoing losses of the injured worker to calculate the benefit amount. Lastly, under the bifurcated approach, the benefit amount is contingent upon the injured worker's condition. If the injured worker has returned to work, the benefit amount is based on the degree of the impairment. If the injured worker has not returned to work, the benefit amount is based on the lost earning capacity.

Permanent Total Disability

Workers who are totally disabled and unable to perform any gainful employment may qualify to receive Permanent Total Disability (PTD) benefits. The eligibility criteria for PTD benefits differ across states and are governed by state laws and regulations. In most states, PTD benefits are calculated as a percentage of the injured worker's average weekly wage (AWW), and are subject to a maximum benefit amount, which varies by state. In California, a worker who receives a 100% permanent disability rating may qualify for PTD benefits. In contrast, under Texas law, an employee is eligible for PTD benefits after a total loss of limbs, sight, or any other impairment that permanently precludes the individual from engaging in gainful employment.

Mexico

In Mexico, workers registered with IMSS are entitled to receive medical care after a work-related accident or occupational illness under the Seguro de Riesgos de Trabajo (Occupational Risk Injury). Employees who are medically unable to return to work are entitled to receive wage replacement benefits. Under IMSS regulations, injured employees are entitled to receive medical treatment, including surgeries, hospitalization, medications, rehabilitation services, and orthopedic care. IMSS provides coverage for psychological and psychiatric conditions deemed work-related if they arise from workplace trauma, chronic workplace stress, or unfavorable working conditions. To be compensable, a work-related injury or occupational illness must be certified by an IMSS physician and supported by comprehensive medical and psychological evaluations. Under the Seguro de Riesgos de Trabajo, carpal tunnel syndrome is covered condition so long as it is directly related to the employee's work environment or job duties. Employees must also obtain a medical diagnosis from IMSS-affiliated healthcare provider. The medical diagnosis must establish a connection between the employee's condition and the workplace conditions.

Additionally, similar to the United States, independent contractors and freelances are not considered employees under the law, and as such, are not required to be enrolled with IMSS. However, independent contractors and freelancers may voluntarily register in the Modalidad 44 of IMSS to receive medical care in the event of a work-related injury or occupational illness. Similarly, informal sector workers can choose to voluntary enroll with IMSS to receive medical treatment after a work-related injury or occupational illness. This option was established, because although the law does not exempt informal sector workers, many are not registered with IMSS by an employer.

Federal public sector employees are covered under the Instituto de Seguridad y Servicios Sociales de los Trabajadores del Estado (ISSSTE, Institute of Services and Social Services of State Workers). Similar to IMSS, ISSSTE provides medical treatment, temporary disability payments, permanent disability compensation, rehabilitation services, death and survivor benefits. Although the benefits provided under ISSSTE are comparable to those offered by IMSS, ISSSTE is generally considered more organized and streamlined, with potentially shorter wait times for medical treatment.

Incapacidad Parcial Permanente (IPP)

If the employee's disability is determined to be partially permanent, IMSS physicians will establish the corresponding percentage of permanent impairment. The worker may then qualify for Incapacidad Parcial Permanente (IPP, Permanent Partial Disability) benefits. A worker with a disability percentage of 25% or less may be entitled to receive a lump sum payment equivalent to five years of the permanent disability pension. A worker with a disability rating between 26% and 50% has the option receive a monthly payment proportionate to the percentage of the full permanent disability pension based on the degree impairment or a lump-sum payment equivalent to five years of the permanent disability pension. When the disability rating is greater than 50% but less than 100%, the employee will receive a percentage of the full permanent disability pension, based on the degree of impairment.

Pensión por Incapacidad Permanente

An employee who is permanently unable to return to work due to a work-related injury or illness may be entitled to receive a lifetime monthly pension. The pension awarded is based on a percentage of the worker's base salary, ranging from 70-100% of the pre-injury earnings, depending on the degree of impairment. Eligible employees may also receive additional benefits, including ayuda asistencial (social assistance) of up to 20% of the permanent disability pension, and ayuda por carga familiar (family dependent assistance) of up to 15%.

As a federally administered system, benefits administered under IMSS do not vary across states. However, regional disparities that may impact the accessibility and quality of services available to injured workers, including, but not limited to, the availability of healthcare services, variations of occupational risk, and the extent of enforcement and regulatory compliance. In remote regions, underreporting and non-compliance are prevalent which may affect an injured worker's ability to access medical treatment and other benefits provided by law. By contrast, the presence of well-established medical centers in Mexico City increases access to prompt and comprehensive care for injured workers. In Jalisco, the IMSS network also offers quality care to injured workers, with a wide array of medical and rehabilitation services available across the state.

Cost and Funding Structures

United States

States' workers compensation systems in the United States are primarily funded through employer-paid insurance premiums. The calculation of a workers' compensation premium is based on the employer's total payroll, the National Council on Compensation Insurance (NCCI) classification codes, and the employer's experience modification factor (EMF). The experience modification factor reflects the employer's claims history relative to similar classified businesses and remains associated with the employer, even after changing insurance carriers. The NCCI classification code is assigned based on the nature of the business rather than an individual's job duties. As a result, employers in high-risk industries, such as construction and manufacturing tend to have higher premiums due to the nature of the business.

Mexico

The Seguro de Riesgos de Trabajo is funded exclusively through employer contributions. Employers are required to register their employees with IMSS and pay the required contributions timely and accurately. The funds are collected and managed by IMSS, in accordance with provisions of the Ley del Seguro Social. The first time an employer enrolls with IMSS or changes their business activity, the business will pay a premium corresponding to average rate of the applicable risk class. Under the Ley del Seguro Social, the five risk classes which reflect the occupational risk level associated with the employer's activities and the corresponding average premium rate for the employer's sector. For example, administrative jobs have a low-risk level while construction and manufacturing jobs have a greater risk level. As a result, administrative jobs are part of a low-risk class while construction and manufacturing jobs have a high-risk class.

The occupational risk rate is recalculated annually which impacts the premium rate. An employer's failure to report a work-related injury could result in increased premium rates.

Challenges

United States

In the United States, one of the primary challenges of the workers' compensation system is the lack of uniformity across states. Another significant challenge is the high cost of litigation associated with worker's compensation claims. In California, for example, the workers' compensation system is highly litigious. Across California, attorney involvement rate for resolved indemnity claims is 38% statewide. In Los Angeles County, attorney involvement is 46% for lost time claims. Nationwide approximately 34% of injured workers who missed more than seven days of work due to a work-related injury retained legal representation.

Another significant challenge is fraud. While employees may engage in fraud by exaggerating or misrepresenting the nature or extent of their injuries, research indicates that workers' compensation fraud committed by employers is prevalent. It is estimated that American employers commit $25 billion in premium fraud each year. Premium fraud occurs when the employer deliberately misrepresents payroll amounts to insurance carriers in an attempt to reduce workers' compensation insurance premiums. The most common form of premium fraud involves the underreporting of payroll by employers. Since premiums are calculated based on reported payroll, lower reported payroll leads to lower premiums. Additionally, the level of risk associated with an employee's duties directly influences the premium rate, with higher risks leading to higher premium rates. For this reason, misclassification is another common form of fraud, involving the intentional misrepresentation of an employee's job duties to obtain lower insurance premiums. An example of misclassification includes labeling a tree trimmer as a landscaper to obtain a lower premium rate. Another common misclassification involves labeling employees as independent contractors to avoid paying workers' compensation coverage. Another type of fraud occurs when an employer changes its company name and ownership structure to purchase workers' compensation insurance under a newly created business in an attempt to benefit from a lower experience modification rate and obtain a lower premium rate.

Mexico

Similar to the United States, fraud presents a significant challenge in Mexico. In 2019, an investigation uncovered a major fraud scheme involving approximately 60,000 fake prescriptions at the national health service. The fraud scheme involved selling the prescribed medication in the black market.

Another significant challenge within the workers' compensation in Mexico is the underreporting of workplace injuries and illnesses. The prevalence of underreporting is primarily driven by the extensive informal employment sector and intentional noncompliance by employers. Similarly, an ongoing concern is the limited availability of medical services in rural areas. The shortage of healthcare workers contributes to delayed treatment for injured employees which can negatively impact the employee's recovery. Further, another continuing concern is the discrepancy in compensation awarded to workers with similar injuries, particularly when workers are classified under different risk classes. Similarly, the criteria for determining the degree of disability, whether temporary or permanent, can be subjective and open to interpretation leading to legal challenges over the fairness and adequacy of compensation.

Finally, the long-term sustainability of IMSS remains a matter of significant concern. Social pressures, particularly a growing and aging population, have a direct impact on the sustainability of the institution.

Conclusion

In conclusion, despite the structural differences between the two systems, both Mexico and the United States are committed to protect injured workers by providing benefits such as medical treatment, wage replacement, and survivor benefits. Mexico's workers' compensation system is administered at the federal level, while in the United States, it is predominantly managed at the state level. Workers' compensation systems in Mexico and the United States will likely continue to evolve along different paths, given their fundamentally different approaches to both the eligibility criteria and the scope of coverage. For instance, beginning in 2022, Mexico required all employers to register domestic workers with the Instituto Mexicano del Seguro Social (IMSS), whereas domestic workers are generally not covered under states workers' compensation systems in the United States. Most recently, in December 2024, the Mexican congress enacted a labor reform which reclassified drivers for Uber, DiDi, and Rappi as employees rather than independent contractors. The reclassification requires employers to register workers with IMSS, and thereby ensuring employees receive medical coverage for workplace injuries, pension benefits, and paid sick leave. California introduced similar legislation, but its enactment has postponed due to pending appeals.

In conclusion, it remains evident that the likelihood of the United States adopting a federally administered workers' compensation system for employees is highly improbable. Similarly, it is unlikely that Mexico would transition to a state-based workers' compensation system. Nevertheless, both countries could benefit from a more standardized and universal approach to claim handling, including the scope of coverage and benefit structures, and access to care. Employees across all sectors in both countries deserve to receive prompt and appropriate care following a work-related injury or illness.

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