Worker Benefits and Claims Management

Injured workers often suggest that the purpose of workers’ compensation systems is to deny any claim where a denial is possible and cut off all benefits as soon as possible. In this way, workers’ compensation is less about compensation and more about limiting employer liability for injuries. Most people dismiss such statements as hyperbole or sour grapes. Yet this perspective is analytically useful because it highlights how workers’ compensation board (WCB) funding creates pressures to minimize claim costs.

As we saw in Chapter 5, when WCBs determine which injuries are recognized, they are making a political choice that allocates costs for injuries between workers and employers. WCBs make similar choices when they manage accepted injury claims. Focusing on returning workers to employability (instead of employment) and the growing interest in early return to work programs reduce employer liability by transferring costs to workers. The threat of having one’s earnings “deemed” (see next section) disciplines workers to accept this treatment. This behaviour is sanctioned because workers are assumed to be malingerers, work is believed rehabilitative, and (bizarrely) being absent from work due to injury is thought...
unhealthy. The highly contestable and political nature of these beliefs tends to be lost amid the social disapprobation that surrounds malingering.

The real issue is actually an economic one. Employer premiums are the source of almost all WCB funding. Employers (understandably) seek to minimize these payments. This method of funding injury compensation creates interesting pressures and mechanisms. For example, experience-rating systems create the impression that employers are reducing the rate and/or severity of workplace injuries (while lowering their premiums) without actually achieving any such reduction. In this way, the state appears responsive to the demands of workers without significantly impacting the capital accumulation process. When the downplaying of injury levels is combined with drawing attention to worker fraud, it becomes possible to direct attention away from the core issue of unsafe work practices.

**EARNINGS-LOSS BENEFITS**

The majority of injured workers experience little or no loss of income from workplace accidents.¹ Those who do can have a portion of their loss offset by earnings-loss benefits.² In New Brunswick, workers who experience an earnings loss due to a compensable injury that extends beyond the day of injury are entitled to benefits equal to 85 percent of their estimated net loss of earnings. Most workers are subject to a three-day waiting period (during which time they are not eligible for compensation) and the disability must be medically confirmed.³

There are two important features of this policy. First, it compensates for a portion (85 percent) of actual net earnings losses. Second, there is a maximum level of insurable earning, which that was $54,200 in 2008.⁴ In other provinces, the amount ranges between 75 percent and 90 percent of net earnings.⁵ Partial compensation is said to reflect that workers’ compensation...
was historically a system of co-insurance, designed to protect workers from ruinous loss, but not all losses. A second rationale for partial compensation is that less-than-full compensation is thought to create an incentive for workers to return to work as quickly as possible. Of course, it also directly saves employers money by reducing claim costs and, consequently, their premiums.

**Deeming earnings**

Workers experiencing a compensable wage loss receive either temporary total disability (TTD) benefits or temporary partial disability (TPD) benefits. Seriously injured workers may start out on TTD benefits and then move on to TPD as they return to part-time and/or modified work. As workers recover from their injuries, those unable (or unwilling) to obtain employment or who obtain employment that does not (in the WCB’s opinion) represent their earnings capacity may have their TPD benefits based on “deemed” income rather than actual earnings. Deemed income is the earnings from a job the WCB considers the worker reasonably able to be hired to do, given any temporary work restrictions.

The process of deeming turns on distinguishing returning workers to “employability” from returning workers to “employment.” Workers are considered employable when suitable work has been identified that the worker is capable of performing. Suitable work is employment the worker is qualified to perform, does not endanger the worker’s recovery or safety (or the safety of others) and is reasonably available in or near the worker’s locale (or to a place the worker could reasonably relocate). Distinguishing employability from employment is meant to reflect that workers’ compensation does not compensate a worker for job loss, but rather for a reduction in employability due to a work-related injury.

Focusing on employability also addresses WCBs’ lack of
control over a worker’s job search effort, the availability of employment opportunities, and employers’ hiring decisions. Employers note that deeming motivates workers to seek employment. Critics note the underlying verve of deeming is that workers could get jobs if they wanted them. This assumption does not grapple with the impact of economic conditions and discrimination against disabled workers on a worker’s job search. Further, it deprives workers of compensation for economic losses that are the direct result of their workplace injury. Regardless of whether workers return to work or have their income deemed, employers’ claim costs are reduced, which (as discussed below) can reduce their premiums.

**Permanent disabilities and the dual-award system**

Workplace injuries leave some workers with permanent disabilities. These disabilities may cause both economic losses (e.g., permanent impairment of earning capacity) and non-economic losses (e.g., a measurable clinical impairment of limb function) that negatively impact a worker’s life. Over time, some jurisdictions have moved to a dual-award system for permanent disabilities that compensates workers separately for economic and non-economic losses.

Ongoing earnings-loss benefits (sometimes called a pension) for permanent disabilities are common, although the duration of this payment (e.g., lifetime, until age 65) varies between jurisdictions. This payment may also be adjusted to reflect changes in earning capacity (e.g., due to long-term improvement or deterioration). Workers may also receive a one-time, lump-sum award for non-economic loss (i.e., impact on a worker’s quality of life outside the workplace). This payment is typically calculated based upon the degree of permanent impairment and may be adjusted based upon such factors as the nature of the impairment and the workers’ age. In Ontario, the maximum non-economic loss was $79,623.83 in 2008.
The dual award system has an intuitive sense to it: it more closely aligns payments with earnings loss. Yet, it also has the effect of making permanently injured workers subject to WCB review and benefit changes throughout their lifetime. This undermines the security of income of permanently injured workers, although the degree to which permanently disabled workers face significant alterations in wage-loss benefits over time is unstudied. Politically, this has the effect of placing injured workers on “probation” indefinitely, thereby making them less likely to resist WCB directives.

OTHER BENEFITS

The majority of compensable injuries entail little or no time lost from work and do not require rehabilitation. When a work-related injury impairs a worker’s employability, WCBs often provide a variety of return-to-work (RTW) services, including counselling services, job-search assistance, temporary modified work programs, training and vocational assessments, and workplace modifications.

Vocational rehabilitation and early return to work

Vocational rehabilitation (VR) programs are designed to increase the probability of a worker returning to employment. Research suggests that VR tends to work better for those who were already traditionally advantaged in the labour market. It is not clear whether those VR recipients who find work have a long-term attachment to the labour market. A study of Ontario workers’ compensation claimants who experienced a period of work-absence found that only 40 percent of those who returned to work did so with a subsequently stable pattern of employment. The remainder had additional periods of absence—one-third eventually left employment permanently because of the effect of their injury.

There has been growing interest in early return to work...
ERTW programs. These programs see employers providing modified job duties to injured workers rather than having injured workers stay at home on TTD benefits. ERTW is, in part, a response to growing concern about the cost of workers’ compensation claims and their effect on employers’ premiums. WCB premiums are discussed below, but the short of it is that employers have periodically applied political pressure on the state and WCBs to reduce premiums. There are three ways to respond to this pressure:

**Reduce injuries:** WCBs and the state can provide inducements (e.g., incentives, penalties) that encourage employers to reduce work-related injuries. This approach places an onus on employers to reduce injuries and, in doing so, suggests work-related injuries are within employer control. It also requires employers spend money on workplace safety. This shifts the cost from compensation premiums to occupational health and safety budgets and may not entail any actual savings for employers.

**Reduce benefits:** WCBs and governments can reduce claims costs by limiting benefit access or reducing benefit levels. This carries the risk of increasing worker resistance to unsafe work practices and to the operation of the compensation system, thereby imperilling social stability.

**Early return to work:** Returning injured workers to work as quickly as possible reduces claim costs and means workers are contributing to the employer’s operation. This approach has good optics, does not interfere with the employer’s management of the workplace, and does not necessarily reduce worker benefits. ERTW also addresses the employer’s obligations under the relevant human rights legislation to accommodate the needs of disabled workers.
Is early return to work a good idea?
ERTW programs are said to enhance workers’ overall recovery. This claim is largely based on research about low-back pain. This research suggests activity (versus bed rest) is often beneficial in injury recovery. This has resulted in ERTW bring portrayed as a form of rehabilitation. It is not clear, however, to what degree work is analogous to the more generalized term “activity.” As we saw in Chapter 1, work differs from other activities because it occurs in the context of a power relationship designed to maximize productivity. Modified work runs contrary to the organizing logic of this relationship and not all employers are willing to truly provide suitable modified work. When this occurs, employees face pressure to work in a manner that is contrary to their medical restrictions, perhaps aided by the (over) use of pain medication. This creates the risk of re-injury and, potentially, addiction. Further, in some instances, the benefits of activity for lower back pain are generalized to other types of injury, for which there is no supporting medical evidence.¹⁹

Workers who resist employer pressure to do things contrary to their rehabilitative best interests risk being labelled as uncooperative and having their benefits reduced or terminated. This reflects that pain is difficult to quantify and, therefore, difficult to factor into adjudicative decisions. This lack of quantification raises the spectre of moral hazard (i.e., there are incentives for workers to exaggerate the extent, nature, or duration of their injuries for financial gain). ERTW is, in fact, often offered as a remedy to moral hazard because it returns workers to work and thereby deprives them of the purported benefits of injury exaggeration. The issue of moral hazard highlights that benefit provision is significantly influenced by concerns about the economic impact of benefits on employer premiums.

ERTW also finds support in psychological theories of work and mental health. The longer workers are away from work, the less likely it is that they will return to their pre-accident
job. It is not clear why this is the case. Perhaps this relationship reflects the fact that the more severely one is hurt, the longer one is off work, and the less likely one is to return to work. The lack of a clear explanation opens the door, however, to speculation about other reasons. For example, research suggests a correlation between work absence and poor mental health. Some theorists also assert that being away from work causes a loss of occupational bonding and that workers begin to perceive themselves as invalids. This may be exacerbated by a desire to avoid painful activities.

The relatively unstudied nature of ERTW allows proponents to argue that ERTW reduces the probability of a worker being disabled in the long term and improves the mental health of a worker. This logic of these assertions is questionable. It is unclear whether work absence (or its duration) is indeed the cause of long-term disability, poor mental health, or a loss of occupational bonding. There may be other factors at work (e.g., the severity of the injury). Further, even if work absence causes these outcomes, it is not clear that the causality works both ways. That is to say, reducing the duration of work absence may not reduce the probability of long-term disability, poor mental health, or a loss of occupational bonding.

**The political economy of ERTW**

What is clear about ERTW is that it reduces benefit duration and claim costs by compelling workers to return-to-work and financially punishing those who do not. This benefits employers, although they may face some additional costs due to the disruption caused by modified work. Yet even these costs can be transferred to other workers (who pick up the slack) and/or the injured worker (who may or may not experience the accommodation that was promised).

WCBs also benefit. The financial and administrative costs of a claim are transferred back to the employer and this savings,
plus the reduced claims costs, can be used to reduce the premium rates charged to employers in the rate group. The state and WCBs can also reap reputational rewards from appearing to reduce the length injured workers are off work and creating the impression that workplaces are safer than they are, as discussed in Chapter 3.

Most of the costs of this strategy (e.g., less compensation, the potential for re-injury, misapprehension regarding how safe work is) are borne by workers. And these costs may be distributed in a gendered manner: injured men whose normal work might be physically demanding can often be accommodated via the provision of “light” office work. Women, whose normal work is often “light” work, have fewer options for modified work. Overall, workers’ experiences with ERTW are isolated and idiosyncratic and thus it is difficult for workers (and for researchers) to see commonalities and identify the root cause of them. This dynamic (discussed in Chapter 7) eliminates much of the political cost of ERTW as a strategy to manage compensation costs.

**Medical services**
Workers are entitled to medical aid to treat or alleviate the effects of a compensable injury. This includes a wide variety of goods and services that promote recovery from the effects of an injury. Medical aid is defined in Saskatchewan’s *Workers’ Compensation Act* as:

2(o) “medical aid” means medical and surgical aid, hospital and skilled nursing services, chiropractic and other treatment and artificial members or apparatus

There has been pressure on WCBs to expand the scope of medical aid as new technological changes and the profit motive have resulted in new diagnostic and treatment procedures. WCBs have started drawing boundaries around such treatments and diagnoses in an attempt to both limit the financial impact of
such treatments on workers’ compensation and protect injured workers from unnecessary and unproven techniques. For example, Alberta’s policy on non-standard medical treatment prohibits payment for such aid unless it meets six stringent criteria. Few treatments that aren’t already standard will meet these criteria. A similar policy governs the acceptability of diagnoses reached via non-standard diagnostic techniques.

So why not just prohibit all such treatments and diagnoses? The policy rationale for this approach is that flexibility in the policy can be useful (e.g., allowing the rapid adoption of a promising new technique), but the tests minimize the potential risk to the worker. The legal reason centres on the concept of “fettering discretion.” In short, WCBs are governed by the common law maxim, “(s)he who hears must decide.” That is, the WCB decision maker must decide. While this decision can be guided by policy, that policy cannot be regarded as bindingly inflexible rule. Thus, simply to prohibit nonstandard medical aid may well result in appeal bodies overturning the decisions because the WCB did not actually exercise its authority to decide a matter as required by statute. The result is policies with very restrictive criteria to effectively preclude nonstandard diagnostic and treatment techniques.

Fatalities
Although the rate of fatal accidents has declined as the economy has shifted towards one based on services, over 1000 workers are killed on the job every year. The dependents of workers killed by compensable injuries are generally eligible to receive fatality benefits. Compensation is only paid when a worker’s death is a result of an accident. For example, a fatality caused by a progressive work-related disease or a workplace injury such as a fall is compensable. A fatality where, for example, a worker has a progressive, compensable disease but is killed by a fall on vacation is typically not compensable.
Fatality benefits tend to be less controversial than wage-loss benefits and ERTW services. Typically, there is little doubt as to whether the fatality is compensable and, where there is doubt, workers’ compensation legislation generally gives the benefit of the doubt to the worker. One exception to this can be occupational diseases. As noted in Chapter 5, causality in these cases can be difficult to prove and employers, governments, and WCBs can be reluctant to acknowledge the work-relatedness of these diseases.

**FUNDING WORKERS’ COMPENSATION**

*Employer premiums*

WCBs must maintain an accident fund that covers the projected cost of injuries and related functions by levying assessments on employers. The amounts involved can be substantial. Ontario employers paid $3.385 billion in premiums in 2006. The premium paid is based upon the perceived risk of the employer, as assessed by the WCB, as well as the employer’s payroll. Generally speaking, WCBs use two mechanisms to calculate an employer’s assessment rate.

First, employers are placed in a rating or industry group. A rating group comprises industries or sectors of the economy that have comparable risks. The base assessment rate for each member of a rating group is the same, meaning that there is relatively little relationship between an individual employer’s accident record and the premiums charged. At the level of rating group or below, each group is meant to be revenue neutral so as not to transfer costs outside of the group. Second, the base assessment rate for a rating group may be further adjusted up or down to reflect a particular firm’s use of the compensation system (or its “accident record”). The purpose of these experience-rating programs is to encourage employers to reduce the volume and severity of accidents.

The calculated assessment rate for a particular firm is applied
directly to an employer’s payroll (up to the “maximum insurable earnings” for each worker), and the overall premium determined. These premium costs are then (in theory) passed on to the employer’s customers through higher prices. While it is illegal for employers to reduce workers’ salaries to pay for workers’ compensation, U.S. employers appear to have done so by withholding wage increases over time. The available evidence in Canada is less compelling.

Employers may also seek cost relief. Cost relief means a WCB ignores some or all of a claim for the purposes of premium calculation. The cost may be transferred to another employer or distributed among all employers. For example, employers may seek relief from additional costs associated with aggravating a pre-existing condition or previous injury. This cost may be borne by the employer the worker was employed by when the original injury occurred. Employers whose workers are injured by the negligence of another employer’s workers may also seek to have the costs associated with the injury transferred to the employer whose workers were negligent.

**Rising premiums**

Employer associations routinely express concern about rising premiums, although the evidence of long-term premium increases is equivocal. Premiums vary a lot from year-to-year, but real-dollar 2007 premium rates are not significantly higher than 1985 rates. Similarly, the cost of individual claims has dropped from $6,054 in 1996 to $5,205 in 2007. There was an increase in long-term, real-dollar cost increases of individual claims between 1960 and 1991. These long-term changes have associated with a greater degree of utilization of workers’ compensation. These increases may reflect employees engaging in riskier behaviour, increased reporting of injuries otherwise ignored, and/or an increase in fraudulent claims. They may also reflect changes in how WCB staff adjudicate and administer
claims. Further, workers often exercise a degree of discretion in how much pain and disability they will tolerate before filing a compensation claim. Expected benefits, administrative barriers, and pressures in the workplace all likely influence when a claim is filed.

It is interesting to note that discussions of rising costs are never cast in terms of a potential virtuous circle. That is to say, rising premiums are never discussed as resulting in safer workplaces and, thus, being self-limiting. Perhaps employers don’t see this association, although their interest in accident-related premium rebates indicates they are aware of the putative relationship between premiums and safety. Perhaps employers don’t believe premium increases will increase safety (see Experience-rating schemes below), either because there is no relationship between them or because other accident-related costs are much greater than premium increases.

Moral hazard
A recurring theme in the academic and professional literature is the potential impact of moral hazard on claim costs. Moral hazard is a polite way of saying that workers have an incentive to (and some indeed do) cheat the system by incurring and/or exaggerating their injuries or delaying their returns to work. There is some evidence supporting this assertion, yet the overall incidence of such behaviour is low. For example, analysis of injuries in Quebec suggests that the length of the recovery period for back-related injuries, low-back pain, and sprains (injuries where disability is difficult to quantify) increases when insurance coverage increases. This phenomenon is not evident in other types of injuries. Alberta’s anti-fraud work in 1995 and 1996 resulted in an estimated savings of only $7.7 million on total claims costs of $900 million.

It is interesting that discussions of fraud almost always centre on workers. Employers, health-care providers, insurers,
and, indeed, WCB employees can defraud the system. Anecdotal evidence about American workers’ compensation systems suggests employer fraud is more common and of much greater magnitude than worker fraud. Injured workers certainly have an opportunity and incentive to defraud the system, although no more so than do employers, health-care providers, and WCB employees. So why, then, the focus on worker fraud?

Part of the answer is that worker fraud is easier to detect than fraud by employers or WCB staff. WCBs have greater access to worker information that would reveal fraud than they do to employer information. And WCBs can count on employers (who have an interest in limiting claims costs) to aid them in investigations of workers. Worker compliance with investigations can be gained via threatening benefit loss. And resistance to seemingly legitimate investigations is a tacit admission of guilt—a dynamic that taps into the widespread belief that workers are untrustworthy. Gaining access to evidence of employer fraud is more difficult because the information is held almost entirely by the employer. It may also entail greater political risk for WCBs, depending upon the political clout of the employer being targeted.

Focusing on worker fraud directs attention to the (mis)behaviour of workers. In this way, it contributes to the negative view of workers that is common in discussions of workplace injury: not only are some workers injured through their own stupidity, but some also abuse the compensation system. In addition to having a potentially chilling effect on the willingness of workers to file claims, this narrative directs attention away from the role of employers in causing employee injuries and fatalities by organizing work in an unsafe manner. And the resulting prescription (tighten claims adjudication and management) reduces claims costs without requiring employers to reduce injury rates. This, in turn, creates a disincentive for workers to file claims or resist inappropriate return-to-work
offers. Focusing on worker fraud creates a political and legislative environment more willing to accept benefit reductions.48

Analysis of the Ontario workers’ compensation system in the 1970s and ‘80s also suggests compensation may not always be awarded on a no-fault basis.49 Factors such as whether an injured worker was of deserving character (often defined in Anglo and masculine terms) and exhibited good behaviour have been important mediating considerations. While overtly racist adjudication is less apparent recently, the spectre of moral hazard provides a powerful way for WCBs and employers to shape the discourse and practice of claim adjudication and administration in a way that benefits capital.

**Experience-rating schemes**

Experience rating is meant to encourage employers to reduce the financial costs of workplace accidents by providing premium rebates and surcharges based on employer claim costs. Proponents suggest it mitigates the key drawback of collective liability: when rates are determined by the accident record of all firms within an industry, individual employers have no incentive to improve their safety because the resulting cost savings are spread across all employers in the industry.50 Ontario implemented voluntary experience rating in 1953 while mandatory experience rating in some industries began in 1984 and Alberta began experience rating in 1987.51

Experience rating means comparing employer claims to those of similar employers, often over several years. Rebates are issued for lower than average costs. Surcharges are assessed for higher than average costs.52 In theory, this creates an economic incentive for organizations to reduce work-related injuries. It also increases the degree to which the true cost of producing goods and services will be reflected in the price of the product.53

Critics of experience rating suggest linking claim costs to...
premium rebates creates an incentive for employers to hide accidents and pressure workers to not file claims, to contract out hazardous work, and to file legitimate and illegitimate appeals of claims in order to improve their experience rating. Further, experience rating does not consider diseases with long latency periods. In effect, critics suggest it is easier and cheaper for employers to game experience-rating systems than it is to lower the number and severity of their accidents.

**Effect of experience rating on injury frequency**

The evidence that experience rating reduces the number and severity of workplace injuries is mixed. The introduction of experience rating in Ontario coincided with a reduction in fatalities by 40 percent in forestry and 20 percent in construction. The relatively dangerous nature of these industries may mean that more and/or lower cost opportunities to improve safety existed in these industries than in other industries. A 2002 study of Quebec firms found experience rating lowered reported accident rates but, as the degree of experience rating rose, firms increasingly chose claims management over health and safety improvements as their strategy to address experience rating. An examination of increased employer appeal activity among experience-rated firms in Ontario supports the assertion that claims management is an aspect of employer response to experience rating.

Research in Quebec found employers are sensitive to the cost of work-related injuries (e.g., lost productivity, cost of replacing experienced workers). As costs rise, accident rates tend to decline. Yet the costs of accidents transmitted to employers through workers’ compensation premiums do not appear to have any impact on the rate of occupational injury. That is to say, the marginal extra cost from experience rating was not significant enough to spur action. This may reflect that even greater costs are associated with increasing safety.
Interestingly, a similar pattern is also found for 1919, when rewarding foremen for reducing accident rates was found to yield little return—perhaps because production incentives swamped the bonus effect.62

This finding runs contrary to a 1994 study that suggested Ontario’s experience rating encourages employers to improve safety practices.63 Yet, this study also found experience rating had an even a greater effect on claims management, including claims monitoring and appeals, as well as interacting with adjudicators to trigger unofficial reviews of claims. Employers were less motivated to provided modified work. Overall, employers sought to minimize the number of claims accepted and the duration of benefits provided.

Effect of experience rating on injury duration
The effect of experiencing rating on claim duration is also interesting. A 1992 Quebec study found experience rating did not significantly affect the rate of reported accidents but was associated with an increased duration of compensation.64 This runs contrary to the expected effect of experience rating, whereby employers are rewarded for moving injured workers off compensation and back into modified work. The study offers no explanation for this result. Research in Ontario found a similar effect, nothing that the introduction of experience rating in the construction industry resulted in an 8.4 percent increase in the duration of compensation.65

This counter-intuitive outcome may reflect employers acting to convert lost-time claims (which affect their experience rating) into no-lost-time claims and thereby prevent wage-loss benefits from triggering. Mild injuries are most amenable to this conversion strategy and mildly injured employees are likely provided with modified or light duties for the duration of their injury. The increased duration after the introduction of experience rating reflects that the subsequent lost-time claim population
comprises more severely injured workers, who would naturally require benefits for a longer time.

Experience rating may also have other, unintended effects. A study of New Zealand experience rating found that the probability of employers asking unlawful, disability-related questions on job application forms rose 71 times for each 1 percent increase in workers’ compensation premiums. With a 2 percent premium increase, firms were more likely to ask such questions than not. In effect, experience rating creates a significant incentive for employers to manage claims proactively (through discriminatory hiring practices) as well as reactively.

A further criticism of experience rating is that it may not achieve a reduction in the actual incidence of accidents because experience rating is determined by claims data, not safety performance. That is to say, there is little link between safety behaviour and the incentive/penalty scheme. Employers may pursue a reward through claims management rather than altering safety behaviour. When this dynamic is combined with the marginal impact of workers’ compensation premiums on the overall costs of injuries for employers, some suggest by a ratio of one to four, experience rating will not elicit further health and safety investment by employers. Instead, employers substitute less expensive claims management behaviour.

**Rationale for experience rating**
The evidence suggests experience rating has little to no demonstrable effect on workplace safety. It also suggests that experience rating generates aggressive claims management, perhaps to the detriment of injured workers. So why, beyond the financial gain employers can realize, would states continue to use experience rating? One answer is that experience rating creates the perception that WCBs and employers are seeking to reduce workplace accidents. And the data generated by
experience rating and similar regulatory schemes makes it seem that there are improvements.

The fact that experience rating doesn’t generally result in safer workplaces is easy to overlook. As we saw in Chapter 3, most “accident rate” data is actually claims data. Using claims data allows changes in the accident rate as well as claim management strategies to create the impression that there are fewer and/or less severe injuries. The contribution of claims management activity confounds our ability to draw conclusions from the data, something rarely made clear in the presentation of the data.

This outcome is difficult to see and document or convey in easily accessible (i.e., quantitative) form. Workers’ compensation claims are adjudicated and administered privately and individually. This obscures patterns in employer behaviour (e.g., systematically disputing claims, offering meaningless or false modified work). Workers who complain about this sort of employer behaviour risk being labelled malingers, particularly given the disproportionate attention paid to worker fraud. Workers also run up against a system that is structurally unable to police employer gaming behaviour: that claim costs reflect claim management instead of safety improvements is obscured by the claims cost metric that drives experience-rating systems.

CONCLUSION

Workers’ compensation systems provide significant wage-loss, medical, rehabilitative, and fatality benefits to workers. The complex and essentially private nature of benefits administration has the same illusion of impartiality as the decision about which injuries qualify for compensation. Yet claims management is a political process. Focusing on returning workers to employability and encouraging workers to make an early return to work (while workers are under threat of income deeming) is designed to reduce employer premiums by transferring costs
onto workers. In this, we find some support for the notion that workers’ compensation is as much about, where possible, denying claims and limiting benefits as it is about paying out claims.

This behaviour finds justification in the widely accepted view that workers will malinger. Return-to-work programs also draw on the narrative that being off work because one is sick is somehow unhealthy and that work is indeed rehabilitative. There is little evidence to suggest that this is true, but again this narrative taps into social disapprobation around malinger. That these policies further reduce employers’ already limited liability for the costs associated with work-related injuries is largely ignored.

The persistence of experience rating, despite evidence that it does not reduce injury frequency or duration, suggests its real purpose is to reduce employer premiums and create the impression that employers are reducing the rate and/or severity of workplace injuries. In this way, the state can appear responsive to the demands of workers without significantly impacting the capital accumulation process. When the downplaying of injury levels is combined with drawing attention to worker fraud, it becomes possible to direct attention away from the core issue of unsafe work-practices.

When combined with the availability of stable, predictable, and immediate compensation for the majority of injured workers, benefits administration and premium collection may reduce the willingness of workers to resist workplace injury. The individualized process of adjudication and appeal discussed in Chapter 7 further reduces the potential for collective resistance.