Author's response to reviews

Title: The European Influence on Workers' Compensation Reform in the United States

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Katherine Herz
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Dear Ms. Herz

“The European Influence on Workers’ Compensation Reform in the United States” is resubmitted with amendments covering all the suggestions made by the reviewers, and the addition of a Background and Conclusions, with insertion of the word Discussion, and some other amendments to conform to the journal style.

Background

Workers’ compensation law in the United States is derived from European social insurance. It has evolved at the federal and state levels over the past century through a long series of reform (or redesign) initiatives. There have been many hundreds of minor redesigns implemented by the state programs, the net result of which is a workers’ compensation system that fails to provide the required benefits to workers. Recent reform initiatives in United States draw heavily on European workers’ compensation systems, yet the European model does not offer the possibility of reform that is more than a continuation of the redesign process.

Conclusion

European workers’ compensation systems offer a number of important examples for redesign of workers’ compensation in the United States. These examples are most useful to the FECA program for federal employees. The EU’s far more generous support for workers’ compensation results in many redesign initiatives that are not easily translated to the more serious need for reform that exists in the United States at the state level. The Public Health Model proposed in 2006 would abolish the workers’ compensation system, and in its place adopt a national disability insurance system for all injuries and illnesses. Although a marked departure from European workers’ compensation, the Public Health Model would embrace the European success with physician consultation with industry and labor.
Reviewer 1

Discretionary Revisions

From a European point of view I would like to add two points to the discussion:
First the resumption of tort liability could bring about more problems than it could solve. Although it sounds plausible to increase the liability of employers, workers are usually in a weaker legal and economic position, therefore tort liability was abolished in most European countries in order to protect injured workers better and insure their timely compensation. Of course, if an employer is grossly negligent regarding OSH, this should be prosecuted everywhere. There are still some countries in Europe with some kind of employer’s liability (e.g. UK and Cyprus) and they have proven to be inefficient, as most insurance funds go to legal litigation costs (e.g. for lawyers) instead of compensation and prevention. In Germany the political discussion now is about protecting workers better, who make public obvious bad practices of their enterprises, before an accident occurs, the so-called whistle blowers. Often, even if they completely correct in their judgement and internal complains were not considered, they are dismissed after publicly criticising their enterprise.

Amended text

Europeans see a considerable advantage in the direct financing of workers’ compensation by employers. European employers are better organized and have more societal power than workers’ organizations, yet are still perceived to be protective of worker interests. Consequently, Europeans hold that if all health care is financed by a public budget, there will be less political pressure from employers to keep the system efficient and there could be less motivation for prevention. Employers may put less effort in better working conditions in order to avoid costs when workers’ compensation becomes a societal cost. Because of these concerns, the proposed reforms in the United States are quite unlike the established European models.

Second I see a strong advantage in employer’s direct financing of workers’ compensation. Employers are usually better organised and have more societal power than workers organisations. If all health care is financed by a public budget, i.e. equally from everyone, there will be less political pressure from employers to keep the system efficient and, probably more important, there could be less motivation for prevention. If the health costs are shared by everyone, employers may put less effort in better working conditions in order to avoid costs, as all costs are born by the whole society.

Amended text

The Public Health Model would impose tort liability for negligence on those who knowingly cause disability. There would be industry-wide shared liability for disability caused by or connected to industry, and society-wide shared liability for disability whose cause cannot be identified. The European view of the United States resuming tort liability...
is generally circumspect since workers are in a weaker legal and economic position than the employer. The U.S. experience is that workers are already in a weak position with workers’ compensation and that tort liability will benefit workers. In Europe, there is political discussion of how to protect workers (whistle blowers) who report obvious bad practices by their employers. Resumption of tort liability in the United States would enhance the protections afforded whistle blowers.

Reviewer 2

Discretionary Revisions

Page 3: the word "federal" is not adequate for most of the EU countries. I suggest "national" or "public"

Amended text

Most industrialized nations now have national workers’ compensation programs based on the German model [2].

page 6: The description of "social democracies": I would add "a tradition of strong labour political organizations". The mixture of market and government assistance is not specific to social democracies. It is common in other political traditions (for instance modern Japan...)

Amended text

In Europe, there is a tradition of strong labor political organizations.

page 8: With the exception of Sweden, all the EU countries have a mix between a closed list with a certain number of diseases and an open system.

Amended text

With the exception of Sweden, all EU countries have a mix between a “closed” system with a list including a certain number of diseases, and an “open” system. In Sweden there is an open system in which each claim for benefits is treated on its own merits, where all illnesses that could possibly arise from workplace exposures are considered.

page 8: I have doubts about the estimation of "three fourths" of the total cost... See reference (15), page 11: where lower figures are indicated. It is very difficult to find out the ratio "compensation of diseases”/total cost of compensation but I feel that it much less than 3/4.

Amended text

The cost of compensating occupational diseases accounts for the majority of the total costs of compensation in European countries [15].

page 9: "Similarly" could be added before the sentence “In France, the list...” In the previous group of countries (Belgium, Italy, etc..., there is also a presumption of cause

Amended text
In Belgium, Italy, and Luxembourg, there is a presumption of cause. It is sufficient for victims to demonstrate that they are suffering from listed diseases and that they have been exposed to corresponding risks or that they have done jobs specified by the lists. Similarly, in France, the list of occupational diseases is considered to be a presumption of cause.

Page 18: the paragraph “The public health model...” could be improved
a) in those countries, occupational medicine specialists intervene at two levels: as labour inspectors (provided by government and/or social security) and as workers of the preventive services (at company level or in services covering different companies). The latter are paid by employers. Usually, inspection is carried out by State labour inspectors; risk assessment and health surveillance are carried out by company (or inter-company) doctors.
b) A complete hazard survey for every workplace is compulsory in all the EU countries (not only Germany). It is completed with a prevention plan. The legal basis is the EU Framework Directive 391/1989.

Amended text

In many European countries, occupational medicine specialists intervene at two levels: as labor inspectors (provided by government and/or social security) and as members of the company preventive services (at one company or in services covering many different companies). The latter are paid by employers. Inspection is carried out by State labor inspectors; risk assessment and health surveillance are carried out by company (or inter-company) physicians. A complete hazard survey for every workplace is compulsory in all the EU countries.

Page 2: There is a list in Finland (Ordinance 1347/88). No list in Sweden.

Amended text

The United States, and a few European countries such as Finland, use a general clause or system of proof instead of a list.

Thank you for your thoughtful consideration. Please let me know if there are any further amendments necessary to the submission.

Sincerely,

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