

MAINE STATE LEGISLATURE

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WORKERS' COMPENSATION MESSAGE

February 28, 1985

of

JOSEPH E. BRENNAN

Governor of Maine

to the

One Hundred and Twelfth Legislature

Mr. President, Mr. Speaker, Members of the Legislature:

Six years ago I came before you and said in my first Inaugural Address:

“I am honored, above all, by the source of our mandate — the decent and generous people of the State of Maine: the millworker from Millinocket, the waitress from Portland, the teacher from Biddeford, and the shopkeeper from Lewiston, I will not forget them.”

The record shows that I have not forgotten them.

Today the working people of Maine have more jobs, better paying jobs, and better social services, than ever before in our history.

Today I come before you to speak about our Workers' Compensation system — a subject vital to the security of Maine workers, and to the well-being of all Maine citizens.

I will propose reforms in that system that will: reduce Workers' Compensation insurance rates; eliminate unnecessary litigation; improve work safety; and preserve fair and realistic benefits for injured workers.

This has been one of the most difficult and complex issues I have faced in my six years as Governor.

The conclusions I have reached, and the proposals I will make, will not please everyone.

I do not submit this legislation, however, to benefit or to please any one group.

My sole concern is the common good, the long-term well-being, of all Maine citizens.

I truly believe that Maine will be a better place to live and to work, that there will be more growth and more jobs in Maine, if these proposals are enacted.

And I believe that all Maine citizens — workers and employers — will be better off as a result.

For we cannot afford to ignore the plain fact that Maine's Workers' Compensation system is simply out of balance. Indeed, the system is out of control!

The evidence is clear.

Maine's rate of work injuries was 45% higher than the national average in 1983.

Maine's rate of actual workdays lost was 90% higher than the national average in 1983.

And, in the latest year for which complete data is available, Maine's benefit costs were more than two and one-half times those of other States.

Yes, the system is out of balance today, and the facts show that it is getting worse.

From 1972 to 1983, Maine's injury rate remained the same; but the rate of lost workdays doubled, and the cost of benefits went up more than 10 times.

From 1972 to 1983, the cost of benefits per worker increased faster in Maine than in any other State in the nation.

The system is out of balance. And the millworker from Millinocket, the waitress from Portland, the shopkeeper from Lewiston, are all paying a price for it.

They are paying a price in lower wages. Studies have shown that high Workers' Compensation premiums come, not out of profits and dividends, but out of wages and take-home pay.

They are also paying a price in lost job opportunities — as some businesses decide not to invest in Maine, and in new Maine jobs.

Some say our Workers' Compensation rates are not really a problem; that our economy is growing; that business investment is strong.

Yes, our economy is growing and prospering. But there are still unemployed people in Maine. And there are still many workers in Maine taking home wages too low to support their families.

The plain truth is all around us. Workers' compensation costs are a barrier to an even stronger Maine.

We cannot ignore the evidence!

When a newspaper in Minnesota quotes a plant manager for the Diamond Match Company, comparing his company's experience in Maine to Minnesota, as saying (and I quote), "The plants in Maine had 24 or 25 lost time injuries. Here we had one. There's just a world of difference in attitudes."

When Georgia Pacific reports that Maine workers, making up only 3% of their workforce nationally, generated 19% of all their Workers' Compensation costs in 1984; and Georgia Pacific says that a \$200 million paper machine is being built in Louisiana rather than in Maine, in part because of these costs.

When the President of Ethan Allen furniture company says his company has (and I quote), "pretty much shut down major investments in our two Maine facilities because of the extraordinary settlements awarded in Workers' Compensation suits."

When the Boise Cascade Corporation reports that Maine workers, making up 7% of their workforce nationally, generate 45% of all their Workers' Compensation costs; despite the fact that the Boise mill in Rumford is one of the safest papermills in the country.

When the President of a small manufacturing company, Elmer's Pipe in Auburn, writes and says (and I quote), "As a company who stresses safety and has not experienced a Workers' Compensation claim in seven years of operation, we find the rate structure bordering on the prohibitive."

When, in my role as Chief Executive Officer of the largest employer in Maine, our own State Government — I have seen costs for Workers' Compensation, paid for by the tax dollars of the working men and women of Maine, rise from \$1 million to nearly \$4 million in just six years.

What is the explanation? From 1981 to 1984, accidents among State workers actually declined by 16%. The cost of living went up only 16%. Yet Workers' Compensation costs increased 69% for State Government.

There is no explanation, except that we have a system that is absolutely out of control.

The evidence is overwhelming!

To your credit, many of you in this Legislature have shown courage and leadership in proposing reforms.

No one has done more on this issue, over a longer period of time, than Speaker John Martin.

He, and other legislators are proposing measures to contain costs, to reduce legal fees, and to simplify hearing procedures.

I welcome and support your efforts.

This year, we have a unique opportunity for reform.

There is widespread public awareness of the problem, and bipartisan agreement on what must be done.

The proposal I will present to you today is designed to seize this opportunity; and to make our Workers' Compensation system serve, once more, the true interests of the working people of Maine.

The program has five parts:

COMPETITIVE RATING

First, we must create a truly competitive rating system.

Workers' Compensation insurance rates are now regulated by State government, not by competition in the marketplace.

Government does not set rates for automobile insurance, liability insurance, or life insurance.

The only reason for government rate regulation is to protect the public from monopolies, as in the case of telephones or electricity.

But there is no monopoly in Workers' Compensation. Today there are more than two dozen major writers of Workers' Compensation insurance in Maine.

If made to compete — some will prosper, others will fail.

Those who do succeed will be those who reduce premiums, improve their employers' safety records, and help workers return to the job.

I reject the recommendation that the State get into the insurance business. The last thing state government needs is one more business to run.

But I do propose that we deregulate Workers' Compensation insurance rates, and adopt a truly competitive rating system, as has been recommended by the Special Study Commission headed by John Menario.

Together with the savings from other reforms I will offer, competition, will provide the incentives for insurance companies to actually reduce rates over time.

Meanwhile, as a transition to a deregulated system, I propose to freeze the maximum rates at the current level for one year.

REDUCED LEGAL COSTS

Second, we must simplify procedures and reduce legal costs:

Maine's Workers' Compensation system, originally designed as a no-fault procedure, has a history of excessive lawyer involvement.

Our Workers' Compensation Act was never, never intended to become the Lawyers' Compensation Act.

In 1982, lawyers were used twice as often in Maine as in other States. And in 80% of all the cases in which they were involved, the worker's claim was not even contested.

Last year, administrative reforms proposed by the Speaker's Select Committee, chaired by Roger Mallar and Gary Cook, were put in place. They have helped simplify the process.

Still, there is more that we must do.

Money that is spent for unnecessary lawyers fees is money that is not available for wages and benefits.

I propose to simplify the claims procedure, and to reduce unnecessary lawyers costs:

First, by paying lawyers fees only when the employee prevails.

Maine is the only State that requires insurers to pay all the lawyers in all cases, regardless of who wins. This discourages settlement, and encourages needless litigation.

I support the efforts of Senators Dutremble and Twitchell; and Representatives Bonney, Cooper, Pouliot, Seavey, and Weymouth; to end this practice.

Second, I propose to eliminate the so-called "Mini-Miranda" requirement in Workers' Compensation proceedings.

This requirement — to warn workers before they can talk about their injuries — is borrowed from the criminal law, and is not needed for administrative hearings. Again, it is unique to Maine, and makes it difficult to get the full truth before the Workers' Compensation Commission. I support Senator Dutremble's bill to eliminate this requirement.

Together, these two reforms will reduce lawyers fees, and will allow all the facts to be brought before the Commission in a timely manner.

SAFETY

Third, we must improve safety in the Maine workplace.

Maine has many dangerous jobs — jobs that by their very nature put workers at risk of injury: jobs like logging, ship-building, machine tool operation, and repetitive assembly.

Still, with worker training, and proper safety equipment, and with more thoughtful design of work tasks, the danger can be reduced dramatically.

Safety incentive programs helped Georgia Pacific reduce its injury rate by 75% between 1980 and 1983; and have helped 30 employees of Lufkin-Anson, a wood processing mill in Madison, go six years without a lost-time accident. This year Bath Iron Works is undertaking a safety program to reduce injuries by 50%.

These companies are in industries that are dangerous by national standards. They show the difference people can make when they act to improve safety. It can be done!

Several years ago, a program to help businesses design their own safety procedures was set up in the Maine Department of Labor. A team of experts is now available, free of charge to provide confidential help to employers on request.

Each year, more employers take advantage of this program, but it is still underused. This year, we will actively promote work safety inspections, and let every business know that we can help them become safer.

No one is more vulnerable to injury than the young and the inexperienced worker. We have instituted programs in our high schools and VTI's to teach our young people the importance of safety in the workplace.

These technical assistance and education programs, combined with the safety incentives that will result from competitive rating, will give Maine businesses the tools and the incentives they need to improve their safety records.

But success in improving work safety requires more than just tools and equipment. It requires new attitudes on the part of every employer and every worker!

Today, I call upon the Legislature to join with me in setting up a Special Commission on Safety in the Maine Workplace — that will include the best Maine safety experts, employers, workers and union representatives — to make recommendations on how to change attitudes and practices, so that together, we can make the Maine workplace as safe as it can be.

INCENTIVES AND OPPORTUNITIES TO RETURN TO WORK

Fourth, we must improve opportunities and incentives for the injured worker to get back on the job.

Of all the facts about Workers' Compensation, none is more disturbing than the fact that injured workers in Maine are off the job longer than workers in other States.

Yes, prolonged absence from the job exacts a financial price from the company and from the insurer.

But of more concern to me is the personal price it exacts from Maine workers, and from their families.

It reduces self-confidence. It disrupts family life. And it makes the adjustment to re-employment more difficult.

To combat this problem, members of the Workers' Compensation Commission have recommended that we begin administrative reviews, after one year, of all cases where some long-term injury is involved. I strongly endorse this proposal.

But we must do more than increase incentives. We must also give the injured worker the training and the help needed to get back on the job.

The Speaker's Committee has been exploring ways to help the disabled worker get needed training, and to encourage employers to hire injured workers. I look forward to seeing their recommendations.

BENEFITS

Fifth, and finally, we must maintain a fair, yet responsible benefit structure for injured workers.

During the 1970's, the Maine Legislature — in response to an urgent need for reform — created, through bipartisan action, probably the most generous Workers' Compensation benefits in the nation.

When those reforms were enacted, the full cost could not be foreseen.

But now we know.

We did not intend to have a benefit system that increased in cost by nearly a third every year. But we have that now.

We did not intend to have a benefit system that discouraged business investment in Maine. But, I'm telling you, we have that now.

We did not intend to have a benefit system that discouraged people from returning to work. But we certainly have that now.

I believe we can have a Workers' Compensation benefit system in Maine that treats the injured worker fairly and generously, and that is affordable.

To accomplish this, I propose, first, that we pay scheduled benefits — one time payments for loss of a bodily function — at a fixed rate for all injured workers.

The regular benefits that an injured worker receives are intended to make up for lost wages. So-called "scheduled benefits" are in addition. They are supposed to compensate for losses in the quality of one's personal life, as a result of that injury.

Under the present system, a fish plant manager who loses a hand could receive up to \$70,000 for this loss, while a part-time sardine packer, in the same plant, could get as little as \$4,100. Both are being compensated for the loss of their ability to hug their child, to pick up a hammer, to knit a sweater, to paint a house.

Is the plant manager's loss in this regard really fifteen times greater than the sardine packer's loss? The question answers itself!

I propose to fix payment so they are the same for all workers.

This will not reduce total workers' compensation costs. In fact, it will raise benefits for our low income workers. But it is fair, and I believe it should be done.

Second, I propose that we coordinate benefit payments with other payments received from Social Security retirement, and employer-paid pensions.

No one intended that an injured worker should make more by retiring than he or she actually earned on the job. This would reduce that possibility.

Third, I propose that we cap the annual cost-of-living adjustment for benefit payments at 5%.

Most states do not provide annual benefit escalation. This change is consistent with recent action by the United States Congress, in the Longshoremen's and Harbor Workers' Compensation Act. I endorse the bill presented by Representatives Daggett, Pouliot, Racine, and Ridley to provide fair, but controlled, inflation adjustments.

And, finally, I propose that we set the maximum benefit allowed for future claims at 110% of Maine's average weekly wage.

Maine, Alaska, and Iowa are the only 3 states in the nation to provide benefit payments as high as 166⅔ percent of their State's average weekly wage.

In 1982, the District of Columbia, our Nation's Capitol, and one of its most liberal political jurisdictions, was also in this group. That year, they passed a law to reduce their maximum benefit to 100% of the average weekly wage. As a result of this and other reforms; Washington, D.C.'s insurance rates have dropped 39%.

This change will have no effect at all on existing claims and awards.

Maine's maximum benefit level will still be among the top 5 states in the nation, better than that available to 92% of all the workers in the country.

I would like especially to commend Representative Pat McGowan, and Representative Dan Gwadowsky, for having the courage to address this issue. My proposal is consistent with theirs.

Taken together, this package will reduce the cost of Workers' Compensation, preserve a benefit level among the very best in this nation, make the Maine workplace safer, and, most of all, improve future job prospects for every Maine citizen.

It is time now for Maine workers, Maine employers, and their insurers to move ahead together, to improve our workplace and our Workers' Compensation system.

I would like to say a few words, directly, to each of these groups.

To Maine insurers:

Today I am proposing reforms that will give you the opportunity to make your business more efficient and more competitive.

I challenge you to make these reforms work for the people of Maine. Be creative. Find ways to reduce rates, to improve safety, and to help the disabled worker.

A number of legislators have expressed to me their concern that the insurance industry will not pass along to employers the saving that will result under my comprehensive package.

If it is apparent that there is an unwillingness on the part of the insurance industry to reduce premiums to reflect their reduced exposure, then it is my intention to offer legislation to require the insurance companies to reflect their reduction in their premiums.

To Maine's employers:

Today I am proposing reforms that will reduce your Workers' Compensation insurance costs.

I challenge you to do your part to make the reforms work. Take advantage of the experts available and make your workplace safer.

Help the injured worker get back to work sooner.

And, most importantly, invest with boldness and with confidence in new jobs for Maine's future.

To Maine workers:

Today I am proposing reforms that will improve the prospects for new and better-paying jobs in Maine.

I challenge you to work with your employers to find ways to make the workplace safer and more productive.

Every dollar that you save by reducing injuries is one more dollar that is available for wages and for investment in Maine.

To my friends in the labor movement I say:

Today I must tell you that our present compensation system of too generous benefits, however well intended, has become a detriment to the future economic well-being of our State.

Yes, with our present exorbitant system we are in danger of "killing the goose that laid the golden egg."

I urge you to carefully consider these recommendations, and to ask yourselves if they are not in the long-term best interest of Maine's working men and women.

Finally, to you, the Maine Legislature:

Today, you have the opportunity to reform our Workers' Compensation system so it will once again serve the true interests of Maine people; so it will once again bring out the very best in Maine's proud and independent workers, and Maine's honest and caring employers.

It will not be easy.

Some of you, especially from my party — the Democratic Party — may find yourselves under attack by even your closest supporters.

Thirty years ago, John Fitzgerald Kennedy, in his **Profiles in Courage**, told the forgotten story of our own William Pitt Fessenden of Maine, a United

States Senator whose distinguished political career was put on the line by his vote — based on principle — against the impeachment of President Andrew Johnson.

John Kennedy ended his book with William Pitt Fessenden's own words. I would like to share them with you today.

Senator Fessenden said . . . and I quote:

“When a man becomes a member of this body he cannot even dream . . . of how much courage he must possess to resist the temptations which daily beset him . . . of the ever-recurring contest between a natural desire for public approval, and a sense of public duty . . . of the load of injustice he must be content to bear even from those who should be his friends.

“All this, if he would retain his integrity, he must learn to bear unmoved, sustained only by the reflection that time may do him justice.”

Like Senator Fessenden, many of you — especially Democrats — are now called upon to test your courage, and your commitment to the common good.

But time will do you justice.

Time will mean more and better paying jobs for Maine men and women.

Do not shrink from the challenge.

In the last few years we have done much together to strengthen Maine.

Still, much remains to be done.

I ask you today to search your souls; to consider what you can do to help bring a good job and a decent life to every Maine citizen in the years to come.

Do not shrink from the challenge. Meet it head on!

Thank you very much.