FINAL REPORT
FISCAL YEAR 1989

MASSACHUSETTS WORKERS' COMPENSATION
ADVISORY COUNCIL

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INTRODUCTION

This is the third annual report of the Workers' Compensation Advisory Council. As the report for fiscal year 1989, it reviews the period from July 1, 1988 through June 30, 1989.

The majority of this report presents summary fiscal year information from the various divisions of the Department of Industrial Accidents. The inspection and submission of this information on an annual basis offers a means for monitoring the agency's performance. We had hoped to be able to provide a wide variety of statistics which could allow parties to draw their own conclusions on the progress of the new law, but as of the date of this writing, we have not been provided with the necessary data.

In reviewing extra-departmental affairs, additional attention is devoted to several important issues which have come into focus since the submission of the previous report. Foremost among these, and presented in the opening section, is the Advisory Council's concern with the budgetary process and the delays which exist in the resolution of disputed cases. In addition, a number of other topics will be discussed which the Council believes merit consideration by all interested parties. This discussion will be followed by a descriptive update of the Advisory Council, its 1989 fiscal year activities, and a department overview. Finally, the

reader's attention should be drawn to Appendix C, which is an Executive Summary to the first phase of a comprehensive study of the workers' compensation system undertaken by Peat Marwick and Main during the latter part of the fiscal year.

A. BUDGETARY PROCESS

As all observers are aware, the Commonwealth of Massachusetts faced a severe fiscal shortfall during the fiscal year which concluded June 30, 1989. The budget for fiscal year 1990 subsequently underwent much discussion and debate by various parties. Due to the economic prognosis for the state in the upcoming fiscal year, the final state budget did not fulfill the expectations of many groups and individuals, and any analysis of the FY'90 budget must acknowledge this general context. At the same time, it is necessary to note that the failure of budgetary appropriations to meet DIA requirements must be considered a factor in the agency's inability to meet its statutory mandates.

It was recognized at the outset of the discussions which led to the 1985 law changes that the intended legislative improvements would necessarily require a larger budget. At the most basic level, the Council believes that one of the strongest elements of the reform law (Chapter 572 of the Acts of 1985) was the assignment of the system's administrative

cost to the business community by means of an assessment process. Further, it is the Advisory Council's understanding that the purpose of the assessment mechanism was to allow revenue neutrality to insulate the Department of Industrial Accidents from shifts in the state's economic climate.

In some ways, the goals of the assessment system have been met. The department reviews all elements in the assessment and collection process, and expert actuarial services are utilized to help ensure that employers are not assessed more than necessary. With the exception of a two-year project to eliminate the backlog, the agency has had no impact upon revenues generated by tax dollars. Yet the purpose behind the assessment process has not been allowed to function. Each year, appropriations requested by the Department of Industrial Accidents have been cut, thereby exacerbating resolution of the agency's case backlog and efficiency.

Prior to the finalization of this year's budget, the administration of the DIA and the judges collaborated in devising a system which could accommodate the scheduling of additional cases. This plan projected an increase of almost 15% in the judges' workload over the first six months of FY'90, thereby allowing more cases to be heard and curtailing the increasing delays between conciliations and conferences. Much of the proposed expansion funds which were cut could have been employed to make this plan operational.

As a case in point, the FY'89 budget request by the DIA, which was supported by the Advisory Council, was for $13,921,252. The administration proposal (House 1) was for $13,930,724, with a cap of 305 positions. House 5600 called for an appropriation of $12,471,833 and 282 positions. This total included $350,000 in computer expansion and funds for the Council to do a study on the implementation of the reform law as mandated by statute. The Senate recommended a budget of $12,630,105, and final approval was on the House figure of $12,409,178 for 282 positions. An additional 20 positions were included for the backlog elimination project.

In FY'90, the DIA's request for $13,712,317 for the upcoming fiscal year was again supported by the Advisory Council. Included in this amount, and to be paid by the state, was the same amount of funding as provided in the prior fiscal year for the backlog elimination project, even though some costs had obviously increased. While representing a 10% increase over FY'89, the amount was still 2% less than the figure requested by the department at the outset of the previous budget process. It is reasonable to conclude that this lesser amount was requested in light of the ongoing fiscal constraints facing the state.

By the conclusion of the most recent budgetary process, the DIA's budget request had been pared by $561,548, for a total of $13,150,779. Inasmuch as this amount was $20,000 above a maintenance budget and no expansion was included in the appropriations for most state agencies, the DIA was

relatively fortunate. However, from the vantage point of recent history, the size of the budget is far less impressive. While the net cost of operating all state agencies has risen, the assessment process has dropped the net cost for the operation of the DIA from $2,957,909 in FY'85 to $775,000 in FY'90.

It is not clear where the apparently different attitudes toward the assessment system arise. The philosophical underpinnings of the assessment mechanism are confirmed by the Senate Ways and Means Committee in its FY'88 budget, which states that, "A new approach to the financing of many unavoidable cost increases needs to be developed, perhaps through partnerships with businesses and citizens who directly benefit from the services provided by the agency...". That this approach lies behind the DIA assessment process was more recently recognized by the Senate Ways and Means Committee in its narrative for the DIA budget for fiscal year 1989, when it stated:

> "It is important to highlight that with the institution of reform, the Department's expenditures are fully-assessed upon employers. This increase in spending, therefore, has not come at additional cost to the state."

Acknowledgment of the revenue neutral concept came in the Governor's budget proposal for FY '89 (House 1), which noted that additional resources for the Department of

Industrial Accidents are offset by additional revenues. Additional recognition of the agency's ability to provide its services with minimal impact on tax revenues is demonstrated by the fact that in each of the budget proposals from the respective Ways and Means Committees, the bulk of the monies for the DIA are included in retained revenue accounts. This procedure provides for a more efficient system, while at the same time limiting the state's appropriation since funds will not have to be transferred back and forth between various accounts.

Assessments fund 94.3% of the DIA's fiscal year 1990 budget. Those funds not generated by the assessment process are earmarked for the backlog elimination project, which is intended to be a temporary expenditure to resolve the thousands of pre-reform cases waiting to be adjudicated.

It is clear that while the current workers' compensation system is improved over the pre-reform system, its performance is still imperfect. But in assessing the effectiveness of the 1985 reform, it is impossible to say how the system might be working if the DIA had been provided with the resources it believed necessary to meet its mandate. Since the reform, the agency has periodically evaluated its needs and discussed them with the Advisory Council, and the Council has supported the agency's budget requests. As the groups best positioned to monitor the system and its changing

needs, the views of the Advisory Council and the DIA on the budget merit serious attention. This would seem especially true since the employer community which now funds the system is represented on the Council.

The Council has supported the DIA's budget requests to date because it believes that the changes brought about by the reform law should be afforded an opportunity to succeed. The past two years have demonstrated that without the necessary resources, the initial success in service was lost. All parties in the workers' compensation system--workers, employers, doctors, attorneys, insurers, and government--will be adversely affected by continued shortcomings in the system.

B. DELAYS IN THE RESOLUTION OF CASES

One of the most significant factors which fueled the 1985 reform was concern over the widespread and lengthy delays which plagued most cases in the system. Delays continue to receive close scrutiny in evaluating the system's performance. The FY 1989 backlog elimination project has been quite successful in resolving "old law" cases. At the time that this project was initiated in 1988, there were 12,202 cases in the backlog. At the close of fiscal year 1989, the backlog of old law cases had dropped to 5,410.

In addition to the delays in the adjudication of pre-11/1/86 cases, there is a continuing and increasing delay with the resolution of "new law" cases. This is particularly disturbing in light of the hopes that the changes enacted by Chapter 572 of the Acts of 1985 would afford expeditious resolution to a disputed case to all parties. The primary delay exists between the conciliation and the conference. By the end of March of this year, there was an average delay of almost 11 weeks. In turn, the average time for the issuance of an order from the close of the hearing was 2 days better than that set forth in the law. Therefore, the time problem appears to be in scheduling the conference, not in waiting for a decision to issue from that proceeding.

At the close of FY'89, the period of time between conciliation referral and conference schedule date was 14 weeks in Boston, 20 weeks in Fall River, 17 weeks in Springfield, and 18 weeks in Lawrence and Worcester. The actual delay for each office is the period of time beyond the 28 day period set forth in the statute. There is a perception that fewer cases are resolving at conciliation as delays to the scheduling of a conference are increasing. If this correlation is correct, the problem exacerbates a backlog/production problem which becomes more difficult to solve as the case volume at conciliation and in dispute resolution steadily increases.

C. ADMINISTRATION OF THE SECTION 65 FUNDS

A number of issues have been resolved during the past year concerning the administration of the various funds set forth in §65 of Chapter 152. Last fall, the Council raised a number of questions concerning the crediting of interest to the various trust funds as set forth in §65 (6) of the law. Requests for clarification were made to the State Treasurer of the Commonwealth when reports showed only $431.52 having been credited in interest to the trust fund accounts.

Through the assistance of the Secretary of Labor, a meeting between members of the Advisory Council, the DIA, and the Administration, including the Treasurer, took place last winter in order to discuss the situation. The issue of posting interest on the balances in each of the funds was clarified. By the end of the fiscal year, a total of $1,246,994 had been credited to the private trust fund and $33,801 had been posted to the public employer trust fund. In addition, a procedure for opening lines of communication was developed so that the information on cash flows could be directed to the Treasurer allowing for more sophisticated investment expected to yield higher earnings. For example, under the previous methodology, interest in the funds earned 6.83% and 7.87% in prior fiscal years, while during the last quarter of FY'89 the funds were earning over 9.5%.

The addition of these amounts of interest to the various trust funds had a positive impact on the assessment rate for this year. It is hoped that such interest can continue to accrue so as to limit the amounts of assessment needed.

D. ADMINISTRATION OF THE SPECIAL FUND

In addition to its questions concerning the interest in the trust funds, the Council also raised some questions over the course of the fiscal year regarding the application of the Special Fund in §65 of the law. Monies in the special fund are generated solely by revenues from assessments upon private sector employers. Other than the backlog elimination project, which is level-funded at this time by state appropriations, the revenue for the operations of the department is completely drawn from assessments, interest, and various fines and fees.

The Advisory Council sought clarification of the integration of the Special Fund with the Commonwealth's General Fund. Under the workers' compensation statute, funds for the DIA are to be kept separate and apart from all other monies received by the Commonwealth [§65 (6) of the law]. The main issue for the Council was whether any funds not expended by the Special Fund in a fiscal year would revert to the General Fund, or whether those funds would remain in the Special Fund to pay for the operating expenses of the DIA.

A meeting with the Secretary of Administration and Finance was arranged by the Secretary of Labor to discuss these concerns with representatives of the Council. The opportunity to open the lines of communication proved very useful. The Council has been assured that if excess assessments occur in any fiscal year, no funds will revert to the Commonwealth. The report on the Analysis of the §65 Trust Funds done for the DIA at the close of the 1989 fiscal year showed a starting balance of $300,000 in the Special Fund for the start of the new fiscal year. These balances, and the interest which accrues, can be used to offset assessment estimates in future years.

E. FISCAL YEAR 1990 ASSESSMENT

The report which was used to establish the FY'90 assessment rate noted improvements in the quantity and quality of information available to analysts. This is a welcome sign, since from the outset the Council has stressed the importance of sound data bases for monitoring and improving departmental operations.

The assessment for the current fiscal year was reviewed by the Advisory Council at its June 28, 1989 meeting. The assessment rate for public entities increased from 0.06002 in fiscal year 1989 to 0.10416 in fiscal year 1990. It was .0216 in FY'88. This is a significant increase, particularly

in light of the fiscal crisis facing political subdivisions of the state, which has resulted in cuts from local aid to cities and towns. At the same time, the fund was estimated to have a negative balance of over two million dollars as of June 30, 1989. A shortfall in public employer assessments for FY'89 was identified as one of the reasons for this negative balance.

The private employer assessment increased from .02232 in FY'89 to .02397 in FY'90. This rate is still less than the .0379 assessment rate for FY'88. The Private Trust Fund expected payout under §34B (COLA) has been much less than previously anticipated. This is due in part to the fact insurers that have newly submitted reimbursement requests in FY'89 generally have a lower number of claims relative to their size than those who sent in FY'87 requests. (Some still have not submitted requests). While the payout was less than projected for the Private Trust Fund, the June 1989 analysis of the Public Trust Fund projects possible problems for it. As of the close of the third quarter of the fiscal year, there was a backlog of reimbursement requests that had not been processed due to the low balance of the fund. There is still a significant portion of public employers, including the state, who have not sought reimbursement, nor paid their assessments. In fact, one interpretation of the law [§65 (5)] could make the fines to be levied (at present) for non-payment greater than the assessments.

In FY'88 the premium based rates were 2.9% for the public employers and 1.3% for private employers. The rates for the current fiscal year are 5.0% and 1.2% respectively. While the private rate has decreased, the public rate has increased significantly. If those public employers who have not paid their assessment begin to contribute and request reimbursement, the Public Trust Fund will be at risk of not being able to pay legitimate claims.

F. SECOND INJURY FUND

The initial reform law changed the percentage of reimbursement from the second injury fund (§37 of the law) from 50% to 75%. Such reimbursement was to be applicable for all compensation paid subsequent to the first 104 weeks of disability. The issue of the Second Injury Fund was the basis of a good deal of discussion during the past year. With the 104 week period expiring in November of 1988, it was necessary to establish a format for handling those cases.

In October of 1989, the department promulgated circular letter number 244 to address the procedure for claims under sections 37 and 37A for all injuries occurring on or after December 10, 1985. Under this procedure, a petition for reimbursement is to be filed with the Attorney General's office, which will defend such actions under the law. If the petition is denied, or if no action is taken within 60 days,

the insurer can file a form (#122) with the DIA and a conference (not a conciliation) will be scheduled. As in any other adjudicated matter, disputed cases will be heard by administrative judges.

In a related matter concerning the Second Injury Fund, there is presently a case pending before the Appeals Court of the Commonwealth concerning payment for services provided under the "old" Second Injury Fund, i.e., the one that existed prior to the passage of the 1985 reform law. At issue is an order from the Superior Court directing the Commissioner of Industrial Accidents to assess workers' compensation insurers and self-insurers the money that is owed a claimant above the $12,549.45 remaining in the "old" Special Fund. A question exists as to whether that assessment process is still applicable in light of the changes made by Chapter 572 of the Acts of 1985. Briefs have been filed in the matter and oral arguments will most likely take place in the near future.

G. JUDICIAL DECISIONS

During the past fiscal year, several judicial decisions have had an impact on the workers' compensation system. One of the decisions, Lettich's Case, 403 Mass 389 (1988) was discussed in the Advisory Council's fiscal year 1988 final report. This decision broadened the fact-finding authority

of the reviewing board, enabling it to determine facts on the appeal of a case to the board. Legislation has been proposed to rescind the effects of this decision and presently is before the legislature. The result, if the decision's effect is not blunted, can only be increased backlogs as more claims can reach the reviewing board level.

Another decision of the Supreme Judicial Court has an ancillary impact on the workers' compensation system in the Commonwealth. In Deerfield Plastics v. Hartford Insurance Co., 404 Mass 484 (1989) the court dealt with a negligence claim by an employer for the investigation, setting of a reserve, and settlement of an industrial accident case. In this case, the company was insured under a retrospective rating plan. The Court rejected the insurer's argument that the burden was on the company to show that the settlement was higher than any reasonable settlement would have been. The decision stated that the insurer had the burden to prove that the amount of the settlement did not exceed the highest reasonable amount at which the claim would likely have been settled if it had been properly investigated. Since this decision was issued in April 1989, it is still too early to determine its impact on the administration of claims. It is not inconceivable, however, that in light of this standard set by the Court, insurers might become more reticent to settle matters without litigation.

Another important court decision issued in the last year concerns the effective date of a section of Chapter 152. In Powell v. Cole Hersee Co., 26 Mass App. Ct. 532 (1988), the court was confronted with determining the effective date of the amendment to §24 of the law, which concerns the waiver by an employee of his/her common law right to sue the employer. The court decided that the phrase "upon passage" refers to the time when the Governor's approval takes place through the affixing of his/her signature. In this particular matter, the court held that the changes were effective as of December 10, 1985, and that no constitutional barrier prevented the statute from taking effect on passage. Whether this application will be applied as the effective date of other sections is still to be determined.

The Appeals Court determined that the enactment of Chapter 691 of the Acts of 1987, with respect to attorney fees, was to cure an imperfection in the 1985 bill. In Arbogast v. Employers Ins.of Wausau, 26 Mass. App. Ct. 719 (1988) the court held that the award of fees in a successful proceeding under chapter 152 was procedural in nature. Consequently, the amendment in the 1987 bill for the payment of fees was applicable to an order for an injury prior to 11/1/86 and was fully retroactive in effect.

In Rebeiro v. Travelers Ins. Co., 27 Mass. App. Ct 1116, 536 NE2d 1103 (1989) the court held that an employee could

not enforce in court an offer to settle a case by a lump sum which had previously been rejected as insufficient by the claimant's attorney.

The Appeals Court also held, in Rivera v. H.B. Smith Company, Inc., 27 Mass. App. Ct. 1130, 537 NE2d 1270 (1989) that a 1944 circular letter of the department requiring that insurers deliver or mail workers' compensation checks to the claimant's home was entitled to deference and was consistent with the DIA's regulations on the timeliness of payments. A recent decision of the Supreme Judicial Court, Daly's Case, 405 Mass 33, 537 NE2d 1224 (1989), held that an insurer could be required to pay a portion of a claimant's attorney fee in a third party action (section 15 of chapter 152) and that a claimant was entitled to fees and costs in an insurer's appeal from a judgement that it pay a portion of the attorney fees in the third party action.

H. ADVISORY COUNCIL

The Advisory Council's last report noted the addition of three new members. There have been two changes in the composition of the Advisory Council since last year. Richard Brown, a labor representative, resigned in May of this year. As of this writing there has been no new appointment to replace him. Grady Hedgespeth was appointed by the Governor as Secretary of Economic Affairs replacing Joseph Alviani as

an ex-officio member of the Council. However Secretary Hedgespeth has recently resigned and Alden Raine has been appointed by the Governor to succeed Secretary Hedgespeth. A list of all Advisory Council members and their corresponding terms is attached as Appendix A.

During the past fiscal year the Council met twelve times. A copy of the Council's agendas is attached as Appendix B. Since the initial members were appointed in August of 1986 the Council has held 38 meetings and one subcommittee meeting through June 30, 1989.

OVERVIEW OF WORKERS' COMPENSATION SYSTEM

MEDICAL REIMBURSEMENT RATES

During the last year, the Rate Setting Commission reviewed medical reimbursement rates. Section 64 of Chapter 572 of the Acts of 1985 mandates the Commission to conduct a review of rates for all health care services provided under the workers' compensation statute. Based upon that review, the Commission was to revise all rates that were determined to be inadequate with respect to such services. The Commission promulgated new rates after holding a public hearing in order to elicit the positions of interested parties. Those rates are once again under review. A hearing was held on August 7, 1989 and new rates were published September 1, 1989.

A public hearing was also held on April 18, 1989 to review the methodology for the implementation of allocating certain costs for medical malpractice liability insurance through the rates for medical care. This was a result of Chapter 351 of the Acts of 1986, which contained a provision for subsidizing malpractice premium costs by industrial accident payers. A 3.5% additional year end payment (based on a doctor's workers' compensation revenue), was included for the first time this year. Physician liability was set at $2,187,300 and for dentists it was estimated to be $2,550. The amount would be variable for political subdivisions who do not insure with insurance carriers.

Another issue in the area of medical treatment which is of continuing concern to the Advisory Council is the access of injured workers to quality health care. Throughout the past year, the Council has been informed of numerous instances of injured workers being refused medical treatment. The importance to the workers' compensation system of reliable and effective medical treatment cannot be understated. Delays in treatment and diagnosis can complicate or prevent the worker's return to work as a productive member of the workforce and prolong the resolution of disputed cases, thereby increasing costs to all parties to the system. In order to resolve this issue, a reasonable solution must be devised which can satisfy the concerns of all parties.

The issue of access was not only of concern to those interested in workers' compensation. The General Court commissioned a study (Chapter 164, section 91, of the Acts of 1988) to investigate the reported physician shortage in the state. The Commission recommended that workers' compensation pass-throughs for medical malpractice be paid in a timely fashion and that the establishment of reimbursement rates under workers' compensation be reconsidered. At present, the statutory authority rests with the Rate Setting Commission. The report also suggested that rates for workers' compensation be increased to improve worker access, and that

appropriate utility controls should be implemented to limit costs.

WORKERS' COMPENSATION INSURANCE PREMIUMS

As noted in the most recent annual report, the Supreme Judicial Court approved an average 19.9% increase for insurance premiums, effective January 1, 1988. On November 23, 1988, a new filing was submitted requesting a 23.5% statewide average increase, to be effective January 1, 1989. The Council exercised its limited right to appear as an interested party at the hearing and outlined some of its thoughts on the filing. A stipulation was entered at the hearing by the Workers' Compensation Rating and Inspection Bureau and the State Rating Bureau for a 14.2% overall average increase in the existing workers' compensation rates, to be effective on and after January 1, 1989. The stipulation also provided that the rates be in effect throughout 1989 and that a new filing not be submitted prior to November 15, 1989, except in certain limited circumstances. In addition, a revised retrospective rating tax multiplier of 6.7% was implemented this year for those insureds with such coverage.

It is expected that a new filing will be forthcoming this fall. To date, no action has taken place on the issue of the unlimited payroll cap, which was relegated to a separate hearing in the 1987 filing. A filing on the

assessment for the guaranty fund to be included in premiums was held September 5, 1989. As of the date of this report no decision has been issued.

AUDITS OF THE DIA

The Department of Industrial Accidents was subject to two separate reviews of its operation during the last fiscal year. One of these was conducted by the State Auditor's office, in accordance with section 65 (10) of the law. This section was amended recently to call for biennial audits rather than yearly audits. The audit itself extended over a number of months and its findings are not available at this writing.

The second review was sponsored by the Advisory Council, in accordance with its authority as set forth in section 60 of Chapter 572 of the Acts of 1985, providing for a systemwide review of the workers' compensation system. Peat Marwick Main and Company was selected from a pool of applicants to conduct this study. Due to the project's uncertain funding and occurrence over two fiscal years, it was divided into two separate components. The initial study, Phase I, concluded with the issuance of a report at the end of the fiscal year. Some of the findings will be briefly summarized here.

The Phase I report concluded that the workers' compensation system and the Department of Industrial Accidents were strengthened by the reform act, and noted improvements in such areas as staffing, rehabilitation services, automation, and case-handling. However, the study also cited inefficiencies at both the system and organizational levels as contributing to backlogs and delays. Further, the study stressed that the interrelatedness of many aspects of system and organizational operation caused delays to carry over from one unit to another. For instance, backlogs in the processing of various forms were seen to impede the efficiency of the system for monitoring case management, and supplying needed information.

At the system level, backlogs and delays were concluded to stem from incentives or disincentives contained in certain provisions of the reform law which resulted in a higher volume of cases than anticipated. The increased case volume has created backlogs in claims processing, conferences, hearings, issuance of decisions, and lump sum settlements. Procedural and staffing constraints were further found to cause backlogs and delays in conciliation, data entry, investigations, and trust fund payments.

Inadequate staffing was also found to inhibit the department's ability to fully pursue some of its mandated activities. The Office of the Legal Counsel was seen to be

unable to pursue collections for fines as vigorously as it might due to its small staff, and staffing constraints were also cited for the department's inability to audit employer assessment payments made through insurance companies. Another factor singled out for its impact upon work performance was delay in hiring or appointments. A slow appointment process for administrative judges, for instance, was blamed for exacerbating existing delays in case flow, and was seen to require improvement before multiple appointments come up in the future.

In the human resource area, the report pointed out units where employee training or follow up training could enhance organizational effectiveness. Additionally, while employee morale was seen to be generally satisfactory, there were areas where departmental employees seemed to desire greater input. On the technical side, computer expansion was identified as necessary in order to permit information processing and workflow to operate smoothly. Automation of the department's Insurance Register was also seen to be of particular importance. A copy of the Executive Summary of the report is attached as Appendix C.

LEGISLATION

The Council provides a forum for the ongoing discussion of changes in the workers' compensation system. During the

past year the Council discussed virtually all the bills filed for 1989 at its March meeting. It voted to take positions on those where seven of the voting members were in agreement. Forty-seven bills, which had been available for review prior to the meeting, were discussed and the Council's position was transmitted to the Joint Commerce and Labor Committee. In addition, the Chairman of the Council testified with respect to the Council's position on the proposed bills, indicating which bills were/were not supported and which bills the Council took a neutral position on.

The changes enacted in 1985 now have a significant track record to review their effectiveness. A list of FY '89 legislative changes is included as Appendix D.

NON-DISCRIMINATION

One of the changes enacted by the 1985 amendments to the workers' compensation law incorporated language which precluded discrimination against employees who exercised their rights under the law. For the last two years we have surveyed each of the superior courts in the state in order to ascertain if any civil suits have been filed under §75 b (2) of the statute. Last year we had 2 respondents and both indicated that no actions had been filed. This year 5 courts responded and once again there were no records of any suits being filed.

It appears that it will be difficult to determine if any suits seeking to enforce this section are filed without reviewing the entire dockets of each superior court in the state. In terms of the larger systems, this is not feasible. In smaller counties, respondents indicated that if such complaints had been filed they would have been aware of it. The scarcity of data makes it difficult to confirm if this section has been effective, or if it is not being utilized.