

10-1963

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### Recommended Citation

Cyril L. McDermott, The Law of Workmen's Compensation and Employers' Liability: A Selected List of Materials 1950-1963, 16 *Vanderbilt Law Review* 1159 (1963)

Available at: <https://scholarship.law.vanderbilt.edu/vlr/vol16/iss4/9>

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# The Law of Workmen's Compensation and Employers' Liability: A Selected List of Materials 1950—1963

*Cyril L. McDermott\**

*Professor McDermott has compiled in this article a comprehensive reference guide to the materials of workmen's compensation law. In addition to general works, current specialized sources are arranged by jurisdiction for easy reference.*

The modern system of social insurance in the form of workmen's compensation and employers' liability had its beginning shortly after the turn of the nineteenth century. Such legislation started in Great Britain with the enactment of the Factories Act of 1802,<sup>1</sup> followed in 1833,<sup>2</sup> 1844,<sup>3</sup> 1878<sup>4</sup> by similar laws, the primary object of which was the elimination of conditions hazardous to the general safety of the working man. This legislation resulted in much dissatisfaction, which in turn spurred spasmodic efforts by the legislatures and judiciary to cope with the inequities resulting under the old common and civil law whereby the employer was liable only for probative fault or negligence.

In 1871, a major step in the development of our present-day doctrine of liability without fault was taken by the German Empire when it enacted a basic employers' liability law. Thus this concept of social insurance was embodied in the legal life of Europe long before its

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The author wishes to acknowledge his indebtedness to his wife, Beatrice S. McDermott, Law Librarian at Dewey, Ballantine, Bushby, Palmer & Wood, and member of the New York bar, who devoted many evenings and weekends to filling out research and typing assignments for the manuscript. Gratitude is also expressed for the assistance of the members of the staff of St. John's University School of Law Library, especially to Dr. Jan Morelowski for bibliographical assistance, and to Mrs. A. L. Petrello for typing. The author also wishes to thank the following who sent helpful responses to his inquiries: Professor Arthur Larson, Director, World Rule of Law Center, Duke University Law School; Dr. Donald L. Ream, Bureau of Labor Standards, U.S. Department of Labor; Ernest H. Breuer, Esq., State Law Librarian, New York State Library. The author has been informed by Mr. Breuer that he has completed the manuscript of a new book on Moreland Act investigations which include legislative inquiries into the administration of the New York workmen's compensation laws.

1. 42 Geo. 3, c. 73 (1802).
2. 3 & 4 Will. 4, c. 103 (1833).
3. 7 & 8 Vict., c. 15 (1844).
4. 41 Vict., c. 18 (1878).

embryonic acceptance in the United States, where various jurisdictions attempted to follow the English pattern of protective legislation by bolstering their existing laws of employers' liability. In 1909, however, after much education of public opinion, agitation by labor groups, and publication of many studies and symposia by scholars interested in labor and sociology, this new trend in legislation was commenced in the United States with the establishment of a compensation fund for coal miners in Montana.<sup>5</sup>

By 1910, the federal government and several states<sup>6</sup> had appointed special commissions to study and report on the feasibility and constitutionality of this new approach to the problem of providing adequate workmen's compensation. The courts found the new remedy of imposing liability without fault of an employer strong medicine to swallow. The classic example of this attitude is the 1911 ruling of the Court of Appeals of New York that the New York Workmen's Compensation Law of 1910 was unconstitutional because it imposed a liability unknown to the common law and constituted "a deprivation of liberty and property under the Federal and State Constitutions . . . ."<sup>7</sup>

Similarly, the consideration of the constitutionality of a newly enacted Arizona statute by several tribunals culminated in the holding of a divided United States Supreme Court that the statute was constitutional.<sup>8</sup> Indicative of the difficulty of the judiciary in bridging the gap between common and statutory liability is the dissenting opinion by Mr. Justice McKenna in this case. Based on strongly persuasive and logical reasoning, it arrives at what appears to be a valid conclusion, even when read today.<sup>9</sup>

More than this brief outline would go beyond the compass and objectives of the introduction to this bibliography; any random reader interested in a more detailed historical sketch of the subject will readily find one in the standard legal encyclopedias.

In addition to laying the foundation for a relatively current and helpful booklist on workmen's compensation and employers' liability, these opening remarks are designed to impress the uninitiated with the fact that in the United States such legislation is relatively modern. Nevertheless, "during the forty years of active compensation systems

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5. Montana Laws 1909, c. 67.

6. Including Illinois, Massachusetts, Missouri, Montana, New Jersey, New York, Ohio, Washington, and Wisconsin.

7. *Ives v. South Buffalo Ry.*, 201 N.Y. 271, 94 N.E. 431, 439 (1911).

8. *Arizona Copper Co. v. Hamner*, 250 U.S. 400 (1919).

9. *Id.* at 434. Nevertheless, the man who in 1881 declared to what must have been an amazed audience of proper Bostonians at Lowell Institute, "The life of the law has not been logic; it has been experience . . . ." during the course of exposing the roots of early forms of liability in the first of his famous lectures on the common law, carried the majority view across with ease in 1919 through his concurring opinion. *Id.* at 431.

in the United States the field has grown into one of the most important branches of the administration of justice. A voluminous literature on the subject has accumulated and the annual output of cases has reached staggering proportions."<sup>10</sup> Since this observation of 1950, the number of decisions and the amount of literature has increased proportionately with the growth of the working population and of industry in America. On the other hand, adequate bibliographies and checklists of such materials are very much lacking in all areas. From this compiler's experience, a reasonable hypothesis for this bibliographical paucity is the multiplicity of systems in operation in various jurisdictions of the United States, each with varying formats and dates of publication, with much material published in ephemeral or quasi-ephemeral condition.

The last effort to collate and list commission and appeals board decisions and reports that the compiler could locate was done by John S. Gummere, then Superintendent of the Yale Law Library Reading Room, in volume 28 of the *Law Library Journal* for 1935. "The list contains publications of workmen's compensation commissions and analogous industrial and accident and labor boards issued in the United States and in Canada. Administrative reports and reports of decisions of the commissions, and of the state courts are included."<sup>11</sup>

The immediate aim of this bibliography is to serve as a reference adjunct to the Symposium published in this volume. All current general and jurisdictional works considered to be important and useful are presented; works considered of special import with comprehensive treatment are annotated. The chronological scope of publication extends roughly from 1950 to 1963, though a few titles predating 1950 have been included as scholarly and historical landmarks.

There are more than fifty systems of compensation in operation in the United States, including three in the federal government, one in each state and the District of Columbia, as well as in the territorial jurisdictions. To make all materials readily accessible the list is divided into three categories. Each category has been subdivided alphabetically either by author or jurisdiction, so that he who scans may quickly find. The arrangement is as follows:

- I. General materials: Arranged alphabetically by the name of the author. This group includes treatises, texts, legal periodical articles (by author and citation), and general pamphlets, etc., not confined to one jurisdiction.

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10. RIESENFELD & MAXWELL, *MODERN SOCIAL LEGISLATION* 136 (1950). It is largely from this well-documented work that the author has drawn for his thumbnail sketch of the history of workmen's compensation.

11. Gummere, *A Bibliography of American Workmen's Compensation Commission Reports and Opinions*, 28 *LAW LIB. J.* 42 n.1 (1935).

- II. A group of several specialized current periodicals: Arranged alphabetically by title. Both legal and non-legal publications largely devoted to articles on workmen's compensation and related matters.
- III. Materials by jurisdiction: Arranged alphabetically by jurisdiction; federal government publications are grouped under *United States*.

Wherever possible, publishers' names and dates of publication are given; prices, being too variable, are not. Federal and state statutes in the various official and unofficial editions are so well-known and readily found through short titles and popular names—"Workmen's Compensation," "Employers' Liability," and "Occupational Diseases"—that their listing has been omitted in the interest of space. Furthermore, each federal and state statute is cited and set forth in the *Workmen's Compensation Service* of Commerce Clearing House, noted below, and is cited and digested in Volume IV of *Martindale-Hubbell*. Neither was it deemed necessary to note such familiar sources as the various federal, state, and American Law Reports digests for the legion of decisions and annotations listed therein, or the legal and insurance encyclopedias.

At this point, let the compiler hasten to interpose the time-honored saving clause of the bibliographer that the list should be viewed as selective and is not intended to be exhaustive, even for the dozen or so years of coverage it purports to include. It is devoutly to be desired that it will prove helpful to: all interested in this Symposium; students of social science legislation; legal reference and law librarians in general; the legal profession—from the neophyte handling his first claim on either side, to the seasoned veteran appealing to the full board or another appellate tribunal; referees and hearing officers; the members of the various boards and commissions, and their learned counsel; all of whom labor so hard in this litigious and tangled vineyard.

## I. GENERAL MATERIALS

- American Bar Association, Section of Insurance Law. *Insurance Policy Annotations: Policy Provisions Annotated*. Chicago, 1949. Pp. 57. Standard workmen's compensation and employers' liability insurance policy, compiled and annotated by the Committee on Workmen's Compensation and Employers' Liability Insurance Law, with the assistance of the insurance bar.
- American Management Association. *Keeping Up to Date on Social Security and Workmen's Compensation*. No. 106 of the American Management Association Insurance Series. New York, 1954. Pp. 32.
- Armand, Harry. "The Story of Safety: A Fifty Year Review," *Safety Maintenance and Prod.*, June 1951.
- Association of Casualty and Surety Companies. *Digest of Workman's Compensation Laws of the United States and Territories Annotated*. New York, rev. 16th ed. 1956. The following appears in the preface to this work: "This Digest covers the workman's compensation laws and related laws of all states of the United States, Hawaii and Puerto Rico, and the Federal law applicable to longshoremen and harbor workers and to the District of Columbia. The laws of each jurisdiction are digested separately under uniform topical headings . . . . Court decisions are included in most jurisdictions."
- Belli, Melvin M., Sr. *The More Adequate Award: A Collection of the More Adequate Awards to February, 1952*. San Francisco, Law Offices of Belli, Ashe & Pinney, 1952. Pp. 76. This is a sequel to Belli, "The More Adequate Award," 39 *Calif. L. Rev.* 1 (1951). The collection is to be kept current in the NACCA L.J.
- Belli, Melvin M., Sr. "Demonstrative Evidence and the Adequate Award," 22 *Miss. L.J.* 284 (1951).
- Benbow, Terence H. "Seaworthiness and Seamen," 9 *Miami L.Q.* 418 (1955).
- Benedict, Erastus Cornelius. *The Law of American Admiralty, Its Jurisdiction and Practice; With Forms and Directions*. New York, M. Bender, rev. 6th ed. 1940. Pocket supplements. This is a landmark treatise on American admiralty law, including much helpful reference material in the complicated areas of injuries to seamen, longshoremen, and harbor workers. It is currently in the process of replacement by the 7th edition, with volumes 5 and 6 published to date.
- Bickley, John S. *Impact of a State Disability Act on Insurance Companies*. Ohio Bureau of Business Research, 1954. Pp. 44.
- Black, S. Bruce. *Free Institutions and the Quest for Security: The Development of Workmen's Compensation in the U.S.A.* New York, The Newcomen Society in North America, 1951. Pp. 28.
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- Business Management Record*. New York, National Industrial Conference Board, monthly. From 1938. Formerly printed under the name *Management Record*.
- Carter, Neil. *Guide to Workmen's Compensation Claims Investigations*. New York, Roberts, 1958. Pp. 154.

- Chamber of Commerce of the United States. *Analysis of Workmen's Compensation Laws*. Washington, D.C., 1962. Pp. 56. Charts. The foreword describes this work as follows: "Presented in fifteen charts, the statutory provisions of the workmen's compensation laws are reduced to their basic elements for the convenience of employers, employees, insurance companies, agents, brokers and all others concerned with the subject. Ready reference is the primary advantage of this work and it is not intended to supplant material that can be found in the statutory texts and law digests. It presents in understandable fashion the essential information needed by the average business office from day to day."
- Cheit, Earl F. "Benefit Levels in Workmen's Compensation," 81 *Monthly Lab. Rev.* 723 (1958).
- Cheit, Earl F. *Injury and Recovery in the Course of Employment*. New York, Wiley, 1961. Pp. 377. A scholarly treatment of the subject and its problems, documented with tables, recorded statistics, and many references. Questions of financing, right to sue, legislative rights, and safety are treated in a companion volume, *Occupational Disability and Public Policy* (a symposium). The following passage from the principal volume indicates its scope: "The originally narrow interpretation of that famous phrase 'accidental injury arising out of and in the course of employment' has broadened to include the victim of occupational disease and the worker whose preexisting disability is aggravated by his job. It has even brought benefits to a Denver University football player injured in scrimmage; to a New York office boy hurt when the paper clip he was shooting with a rubber band backfired; and to the widow of the California executive whose suicide was traced to a work-caused maniac-depressive state. Only in the publicity they attract, however, do the exceptional and liberal applications of workmen's compensation overshadow the more common result: inadequate benefit protection and obstructed rehabilitation of seriously injured workers. Nor have the results at these two extremes merged into some satisfactory average. . . . The scope of the available evidence and the amount of space necessary to explain the methods and assumptions . . . employed in its analysis require that the book deal primarily with how well workmen's compensation succeeds in: 1. restoring economic losses due to occupational disability and death, 2. providing medical care, and 3. returning injured workers to their jobs."
- Cheit, Earl F. *Medical Care Under Workmen's Compensation*. Bureau of Labor Standards Bull. 244. Washington, D.C., U.S. Dep't of Labor, G.P.O., 1962. Pp. 113. Forms, tables.
- Cheit, Earl F. Gordon, Margaret S. (Editors) *Occupational Disability and Public Policy*. New York, Wiley, 1963. Pp. 446.
- Cheit, Earl F. "Radiation Disability: Will It Be Adequately Compensated?" in *University of California Institute of Industrial Relations Reprint No. 133*, 73. Berkeley, Univ. of California, 1959.
- Commerce and Industry Association of New York, Special Committee on Workmen's Compensation. *Medical Aspects of Workmen's Compensation, Two Symposia*. New York, 1953. Pp. 104.
- Commerce Clearing House, Inc. *Workmen's Compensation Law Reporter*. Chicago, from 1937. Looseleaf. One of the CCH series of Topical Law Reports. Probably one of the most useful ready reference publications in the field for workmen's compensation practitioners, referees, and judges of appellate tribunals, this service includes a digest of all decisional law bearing

on federal and state statutes as well as common-law liability. It seems to leave no subject in this area unreported. The service also contains summaries of state compensation laws, District of Columbia compensation statutes, the Federal Employers' Liability Act, the Longshoremen's and Harbor Workers' Compensation Act, and the Federal Employees' Compensation Act.

- Committee on Tuberculosis in Industry, National Tuberculosis Association. *Industry, Tuberculosis, Silicosis and Compensation, a Symposium*. New York, 1945. Pp. 126. Current papers for physicians and administrators interested in industrial medicine and workmen's compensation, prepared by the Committee on Tuberculosis in Industry of the National Tuberculosis Association and the American Trudeau Society. Leroy U. Gardner, M.D., editor.
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- Davidoff, Leo M. Schlesinger, Benno. *Head Injuries in Workmen's Compensation; Medical and Administrative Data*. New York, Commerce and Indus. Ass'n of New York, 1956. Pp. 224. A study prepared for the Workmen's Compensation Committee of the Commerce and Industry Association of New York.
- Dawson, Marshall. *The Development of Workmen's Compensation Claims in the United States and Canada*. Washington, D.C., International Ass'n of Indus. Acc. Bds. Comm'n, 1951.
- Dittmar, William Robert. *State Workmen's Compensation Laws; Law for the Workingman*. New York, Oceana Publications, 1959. Pp. 93. Number 19 of the publisher's Legal Almanac Series. Completely revised and rewritten by the publisher's editorial staff.
- Dodd, Walter F. *Administration of Workmen's Compensation*. New York, The Commonwealth Fund, 1936. Pp. 845. "This treatise offers the first comprehensive survey of the actual administration of workmen's compensation laws throughout the United States. . . . The chief contribution of the work is supplied by its critical evaluation of techniques and results achieved in the forty-six states which now have workmen's compensation legislation." Margold, Book Review, 50 *Harv. L. Rev.* 1207 (1937).
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- "Federal Employers' Liability Act: A Symposium," 18 *Law & Contemp. Prob.* 107 (1953). Pp. 250. The contents are: "Foreword," Robert Kramer; "What the



- Supreme Court Has Done to the Old Law of Negligence," Sidney S. Alderman; "The Vindication of a National Public Policy Under the Federal Employers' Liability Act," Melvin L. Griffith; "The Quest for a Federal Workmen's Compensation Law for Railroad Employees," Clarence A. Miller; "FELA or Uniform Compensation for All Workers?," Reginald Parker; "Damages for Personal Injury: The Impact of Insurance," Louis L. Jaffe; "An Interpretation of the Act of 1939 (FELA) To Save Some Remedies for Compensation Claimants," Vernon X. Miller; "A Decade of Progress Under the Federal Employers' Liability Act," William H. De Garcy; "The Safety Appliance Act and the FELA: A Plea for Clarification," David H. Louisell and Kenneth M. Anderson; "The Crisis in Work Injury Compensation On and Off the Railroads," Jerome Pollack; "Employers' Liability in Great Britain," W. F. Frank; "An Analysis of Judicial Interpretation and Application of Certain Aspects of the Federal Employers' Liability Act," John M. Ennis; "The Venue Clause and Transportation of Lawsuits," J. C. Gibson.
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- book is destined to be the Prosser of workmen's compensation." *Id.* at 555. "These volumes represent a 'labor of love' growing out of many years of teaching and practice in the field of workmen's compensation. This is one of the best works on the subject; it is well written and excellently annotated and indexed." Horovitz, Book Review, *Cornell L.Q.* 281, 282 (1953).
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