

The Delaying of Workmen’s Compensation in Ghana: Review Article

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Abstract

Background:

Objective:

Method:

Result:

Conclusion:

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Introduction

This paper focuses on current practices and challenges in the administration of the workers compensation system in Ghana. We investigated the design of workmen’s compensation legislation to assess if it places a burden on the physician to determine the degree of disability in job related injuries or diseases. We also investigated whether administrative modalities for the settlement of disability claims contribute to delays. We considered the ethical and legal issues in the role of the physician as a healer and a claims adjuster. In settling claims by injured workers, it is noticed, there are] M i

The workmen's compensation regime in Ghana

The Constitutional provisions for occupational health and safety of persons employed at workplaces in Ghana are guaranteed by Article 24(1) of the 1992 Constitution of Ghana. Article 24(1) provides, among others that ... "every person has the right to work under satisfactory, safe and healthy conditions ..." It covers those who are engaged in both the formal and informal sectors, as well as those who are self-employed. The aim is to ensure that all workers work under safe conditions devoid of significant adverse effects on their health. The Constitutional protections are broader than the Workmen's Compensation Law 187. The constitution places the burden on the government to ensure that the safety, health and welfare of persons at work are safeguarded. This is additionally provided for under Article 36(10), that: The State shall safeguard the health, safety and welfare of all persons in employment, and shall establish the basis for the full deployment of the creative potential of all Ghanaians.

Current legislations for the safety, health and wellbeing of persons are scattered in a number of public laws and policies such as the Factories, Offices and Shops Act, 1970 (ACT 328), the Mining Regulations, 1970 (LI 665), the Radiation Protection Instrument, 1993 (LI 1559), and the Workmen's Compensation Act 1987 (PNDC 187) [1, 9]. The day to day administration of these laws and policy are all under different Ministries and Agencies. The Factories, Offices and Shops Act (FOSA) is administered by the Department of Factories Inspectorate of the Ministry of Employment and Social Welfare but the provisions of the Mining Regulations, are enforced by the Mines Department, the enforcement wing of the Minerals Commission. The Radiation Protection Instrument, 1993 (LI 1559) is administered by the Radiation Protection Board, under the Ghana Atomic Energy Commission. The Workmen's Compensation Act is under the Labour Department of the Ministry of Employment and Social Welfare [10,14-16,1].

The primary legal authority for Workmen's Compensation regime and administration in Ghana is the Workmen's Compensation Law of 1987. Section 1 and 2 of Law 187 provides:

(1) This law shall apply to workmen employed by the Republic as well as by private persons, except in the case of persons in the Armed Services of the Republic.

(2) An injured workman shall not suffer any diminution in his earnings while he undergoes treatment for injuries he has sustained through an accident arising out of, and in the course of, his employment [1, 7].

The law appears to be addressing those engaged in the formal (public-private) sector, although those in the informal sector probably need such protection the most due to their limited bargaining power [1, 9]. This gap is incongruent to the goals of the WCL 187. The goals of WCL187, apart from its formal sector employee poverty reduction intent, are: to provide workers with insurance coverage against injury. It also seeks to lessen or eliminate wasteful litigation for benefits for such injuries, and to provide policies that promote occupational health and safety as stated in the explanatory notes to WCL 187. Even before the promulgation of WCL187, employers had a general duty of care even if there were no specific performance or legal standards. They were still obligated to protect workers, where there was a recognizable hazard against health & safety, where employees were likely to be exposed to risk, or where the work posed risk of death or serious injury. The overall goal of the WCL 187 is no different from the net effect of the labor act on the rights of workers

Human rights protection under the Labor Act

The Labor Act, 2003 (Act 651), Section 118 states, inter alia, that:

It is the duty of an employer to ensure that every worker employed by him or her works under satisfactory, safe and health conditions

(d) Takes steps to prevent contamination of the workplaces by, and protect the workers from, toxic gases, noxious substances, vapors, dust, fumes, mists, and other substances or materials likely to cause risk to safety or health.

(h) Prevent accidents and injury to health arising out of, connected with, or occurring in the course of, work by minimizing the causes of hazards inherent in the working environment [10]

Today, compliance with existing national occupational safety and health specific standards require the control of ventilation, air contaminants, noise as well as MinR] Min

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as it appears among the list of top 10 causes of out-patient attendance almost every year" [8,17].

The enactment of WCL 187

Prior to the enactment of WCL187, injured workers had to fend for themselves, sometimes suing the employer for damages. Employer liability was based on negligence due to the general duty of care, proof of which was by circumstantial evidence to show that a breach had occurred, or there was notice of the possibility of the breach. The

delays and backlog of cases, or even scare off would be claimants for fear that he might not be able to pay the physician, although such is not the case.

Data Collection and Evaluation

Method

The methodological approach used in this study consisted of electronic search of academic data bases and the internet. The internet search was first done for laws that addressed all or part of the primary research objective. We interpreted the laws using accepted legal method of statutory interpretation. This exercise covered three areas, namely statutes on workmen's compensation, national policy, executive instruments and administrative regulations, and case law. We conducted the internet and desktop searches on platforms such as the Ghana Law Reports 2000-present, Ghana Medical Journal, American Journal of Public Health and the web sites of the United Kingdom and the Republic of South Africa for laws on compensation.

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Table 3 2009 Compensation claims by both Public and Private sector workers

The research found that by 2010 the backlog of claims comprised

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