REPORT OF INDUSTRIAL ACCIDENTS COMMISSION, 1912

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Pennsylvania. Industrial accidents commission.

STATE OF PENNSYLVANIA

REPORT

OF

INDUSTRIAL ACCIDENTS COMMISSION

1912

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Philadelphia.

HARRISBURG, PA., December 31, 1912.

To His Excellency, John K. Tener, Governor of the Commonwealth of Pennsylvania:

SIR:—The Industrial Accidents Commission, appointed in pursuance of the provisions of the Act of June 14, 1911, P. L. 917, respectfully makes report to you, for transmission to the General Assembly as provided in that Act:

Two subjects of investigation were prescribed for us,—the prevention of industrial accidents, and the compensation of injured workmen and their dependents.

The original compilation by this Commission of statistics showing the causes of accidents in the many different industries of Pennsylvania has been neither necessary nor possible. To prepare a set of such statistics, complete enough to be reliable, would have required more time, more authority and more funds than have been given our Commission. Furthermore, it would have been, in the main, a mere duplication of the data which for years past has been gathered and digested by the Department of Factory Inspection, all of which has been freely offered for our use and has been extremely valuable to us. We are greatly assisted also by having the information collected in this country and abroad during the past decade by many other authorities, both public and private, for there is no radical difference between the industrial accidents of Pennsylvania and those of our neighboring States.

It may be stated, with fair exactness, that twenty per cent. of all factory accidents are primarily due to the negligence of the employer, or of those representing him in positions of superintendence; that twenty-five per cent. are chiefly due to the negligence of the injured man himself; that twenty per cent. are due to the negligence of a co-employee of the injured man; while thirty-five per cent. are due to what may be called the hazard of the industry. Each extension of the duties of the employer, however, tends to diminish this last group and to increase the first group of acci-

dents chargeable to the employee's negligence. Under our present system of compensation for such injuries, an accident of the first of these classes alone furnishes a right of action against the employer, and, even then, the action may be defeated by the defenses of contributory negligence or of assumption of risk. From statistics of all kinds, from a comparison of the records of our Courts of Common Pleas with the records of our Factory Inspection Department, and from our actual experience with cases of this character, we can assert with entire confidence that *in less than five per cent. of the industrial accidents in this State* is a substantial sum (*i. e.*, as much as medical expenses and actual wages lost) recovered by the injured man or his dependents. It will be seen at once that the pecuniary advantage to the employer of a decrease in the number of accidents is hardly great enough to furnish a powerful incentive to the introduction of safety appliances. The factory law, with its threat of punishment for non-compliance, furnishes a stronger incentive. We believe, however, that no "Factory Act" can do as much towards the *prevention* of accidents as a system that will make it directly and immediately expensive to the employer to be careless of the safety of his workmen. This should be borne in mind in weighing the relative advantages of the different systems of workmen's compensation,—a subject mentioned later in this report.

The Factory Act.

We find in force in Pennsylvania, in the Act of May 2, 1905, P. L. 352, a Factory Act similar in its terms to those of most of the important manufacturing States of this country. We have sought from every source criticisms of the provisions of this law, having begun our task with the impression that this could be strengthened and added to with promptly beneficial results, but we are now agreed that little change is required in the language of the law. What is required is its continued and vigilant enforcement. Something was accomplished under the old Factory Act of 1899, much under the present law, and much yet remains to be

done. It is a matter of efficient administration rather than of legislation. In some of the industrial plants that we have visited we have seen frequent instances of non-compliance with the Act, but this fact is not necessarily indicative of inefficiency in the Department of Factory Inspection, nor of disregard of the law on the part of the employers. It may show only the magnitude of the changes required by the existing law and the impossibility of complying with them all up to the present time. We believe, however, that the Department of Factory Inspection should adopt more stringent measures to compel compliance with that part of the law (Section 11) that requires the guarding of machinery, and we believe that the passage of an adequate compensation law for injured workmen will materially assist the Department in this direction.

The Factory Act seems to us to require amendment in its definition of the kind of establishments covered by it. The administration of the Act has been affected by the vagueness of the definition given in Section 1, and the narrow construction put upon that section has seriously restricted the operations of the Department of Factory Inspection. For this reason, we recommend the change in that section shown in the proposed Act appended to this report as Exhibit "A," page 17.

Hours of Labor for Women.

A fertile cause of accidents, recognized by every authority upon the subject, is overwork,—*i. e.*, excessive hours of labor. Many accidents, which in statistical tables are ascribed to the negligence of the injured workman himself, are in reality due entirely to overwork. And this is particularly true of women, whose incapacity for long-continued toil, particularly at periods of illness, is strikingly shown by these statistical reports. The Factory Act of 1905 (Section 3) limits the hours of labor of women to twelve hours per day and sixty hours per week. This provision is not sufficiently restrictive. No other important manufacturing State allows women to be employed in factories for such

long hours as these. In Ohio the limitations are 10 hours per day and 54 hours per week, in New York 10 hours per day and 54 hours per week, in New Jersey 55 hours per week, in Maryland 10 hours per day, in Massachusetts 10 hours per day and 54 hours per week, in Connecticut 10 and 58, and in Illinois 10 hours per day. We feel that we do no injustice to the industries of our State in recommending, as we do in Exhibit "A," the reduction of the limitation of hours of labor for women in industrial establishments to 10 hours per day and 54 hours per week, but in view of the law in this State up to the present, and in view of the laws now obtaining in other States, industrially competitive with Pennsylvania, we believe that this reduction is all that is proper at this time.

Reports of Accidents.

Undoubtedly further preventive measures will in the future be found to be desirable, and to this end the study of the subject should be continued. We have already in our Bureau of Industrial Statistics an organization equipped for the compilation of the necessary data, and it is plain that information, promptly reported to it after each accident, will in time furnish a basis for legislation far more accurate and complete, and at far less expense to the State, than the incomplete returns obtainable by circular inquiries issued during a short interval by a commission such as ours. It will be much easier to observe the effect of any compensation law adopted by the legislature if such prompt and complete reports are made by the employer. The reliability of such reports will be increased if the employers making them may do so without fear of their production in evidence in any litigation. For these reasons we recommend the proposed law attached hereto as Exhibit "B," page 20.

Workman's Compensation.

The compensation of injured workmen is a subject that has received exhaustive study in every civilized country; and within the past decade the current of public opinion

in favor of such compensation has become so strong that no argument in its favor is necessary. To contend for the continuance of the old common-law system is futile. That the injured workman should be made whole at the expense of the industry seems now as indisputably right as that the industry should bear the expense of repairing a broken machine. On the other hand, the subject of a just and equitable compensation is rendered so difficult by constitutional limitations, and is necessarily a matter of such delicate adjustment, that to permit it to be controlled by sentimental or demagogic considerations is to invite the total failure of the effort. The varied experience of our ten sister States that have adopted laws on this subject shows that ignorance or insincerity cannot be permitted to interfere if a just and useful result is to be attained. Important everywhere, in Pennsylvania the subject is of extreme importance, because of the industrial leadership of our State. So many persons and so much property are involved that to attempt a reckless experiment in this matter would be a grave moral and economic offense.

Four general systems of compensation for injured workmen have been tried at various times and in various countries. They are:

(*a.*) Employer's Liability, based on fault.

(*b.*) Compulsory or Elective Insurance Funds.

(*c.*) Compulsory Compensation by Employer to Employee.

(*d.*) "Elective" Compensation by Employer to Employee.

Our views as to each of these methods and their availability in Pennsylvania are summarized as follows:

Employer's Liability.

This means the present system of the common law, with such statutory modification or enlargement of the right of action as may be made by the legislature. However favorable to the employee such new legislation may be, this system will always be open to many objections. These

are so well recognized that mere reference to them will be sufficient. They are (1) the delay while the case is awaiting trial and while appeals are pending, always preventing relief at the moment of the workman's greatest need; (2) the technicality inseparable from hard-fought litigation; (3) the frequent failure of cases through the employee's inability to produce "evidence of negligence;" (4) the success of a plaintiff whose conscience and whose counsel permit him to exaggerate or to lie, while one more scrupulous will be defeated in a case quite as meritorious in fact; (5) the bitterness that nearly always results, to the injury of both employer and employee; (6) the frequency of illogical and unjust verdicts, and the possibility of corrupt verdicts; (7) the waste of litigation in lawyers' fees, witnesses' fees, disturbance of business, and expenses of preparation for trial—a victory for the employer often costing him as much money as would have quite relieved the needs of the employee; and (8) the exorbitant contingent fees often charged by lawyers representing the employee. It is no exaggeration to say that, under this system as now applied in Pennsylvania, not more than one-third of the amount spent by the employer in claim department outlay ever reaches the employee. The balance is absorbed in transmission.

We believe that to discuss the demerits of such a system would be superfluous. It has brought injustice, suffering and discontent. Its disappearance will be welcomed by every thinking man.

Compulsory or Elective Insurance Funds.

These are sometimes administered directly by the State itself, as in most continental European countries and in the States of Ohio and Washington, and sometimes by private associations under the general oversight of the State, as in Germany and in Massachusetts. In some cases the employees themselves are required to contribute toward such funds. Almost invariably the payment is made directly from the fund to the injured employee, regardless of any question of negligence, and the employer