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WORKERS' COMPENSATION SYSTEMS: PLAGUED BY RETALIATION AGAINST WORKERS

According to a recent *New York Times* three-part investigative series, many workers are retaliated against for filing for workers compensation benefits.”¹

SOME COMPANIES HAVE INSTITUTED SAFETY “REWARD” PROGRAMS OSTENSIBLY TO CURTAIL INJURIES, BUT ALSO TO KEEP WORKERS FROM FILING LEGITIMATE CLAIMS

- “Some factories are using scoreboards to record days passed without an injury. Some companies reward workers who report no injuries with a banquet featuring a lottery with a cash prize. Other plants play safety bingo: if there are enough consecutive injury-free days, one worker gets bingo and wins a cash jackpot.”
- “[M]any safety advocates and labor unions are worried about the growth of such programs, which the Occupational Safety and Health Administration considered banning in the 1990s.”
- During Congressional testimony last year, a former President of the American College of Occupational and Environmental Medicine told a story about a worker who sought medical treatment after he received a significant laceration while on the job. The employee insisted that he received the injury at home, but “to claim otherwise would risk that his fellow workers would lose a steak dinner.”²
- “Last year, the committee’s staff criticized these programs, saying in a report, ‘Since workers are human and inevitably make errors, the consequence of rewards or punishment is often a failure to report incidents, rather than a reduction of injuries.’”

¹ Kleinfield, N.R. and Greenhouse, Steven, “For Injured Workers, a Costly Legal Swap,” *New York Times*, March 31, 2009; Kleinfield, N.R. “Exams of Injured Workers Fuel Mutual Mistrust,” *New York Times*, April 1, 2009; Greenhouse, Steven, “ In Workplace Injury System, Ill Will on All Sides,” *New York Times*, April 2, 2009. This fact sheet based primarily on “In Workplace Injury System, Ill Will on All Sides.”

² Statement of Robert K. McLellan, MD, MPH, FACOEM before the United States House of Representatives Education and Labor Committee Hearing, “Hidden Tragedy: Underreporting of Workplace Injuries and Illnesses” June 19, 2008.

- “‘There’s like a philosophy that unless your arm is falling off, don’t tell anybody, take the pain, don’t go the emergency room,’ said Jerry Graves, a DuPont machine operator who injured his thumb. ‘Say you smashed your finger with a hammer at home.’”

FEAR OF RETALIATION IS KEEPING WORKERS FROM FILING LEGITIMATE CLAIMS

- While it is difficult of estimate how often employers do retaliate, “several studies have found that the perception of widespread retaliation has contributed to the decline in the number of compensation claims in New York and nationwide in recent years.”
- “‘There are lots of people out there who aren’t filing claims because it’s not worth the hassle and because of the fear of retaliation by the employer,’” said Leslie Boden, a professor of public health at Boston University.”
- Fred Willette developed the debilitating hard-metal pulmonary disease (similar to black-lung disease) after seven years at a metal-parts factory grinding metal tools without adequate respiratory protection. When he told his employer that he planned applying for workers’ compensation, he was fired the next day and his company challenged his claim.

WHEN EMPLOYERS PRESSURE EMPLOYEES, WORKERS SUFFER

- “Employers sometimes tell their employees that they will take care of them when they are injured and encourage the employees not to file claims. This creates an environment where injured workers do not always get the care they need and the compensation they might deserve.”
- Gerver Lopez’s employer did not call an ambulance after the scaffolding broke while Mr. Lopez was putting up aluminum siding on a house in 2007. Doctors say the 22 year-old will never walk again, and his hospital bills alone have been more than \$45,000. “The boss said he was going to pay for everything and I shouldn’t say anything,” Mr. Lopez told the *New York Times*, but “he didn’t give me a penny.”
- Immigrants are particularly vulnerable to this problem. “Their bosses tell them, ‘Don’t go to the hospital. Don’t say it happened at work. I’ll take care of you. I’ll take care of your medications,’ said Gonzalo Mercado, executive director of El Centro del Imigrante, a workers’ center on Staten Island. ‘In most cases, the employer never does any of that.’”