MAGNITUDE OF THE PROBLEM:

In the United States, worker deaths from toxic chemical exposures and other occupational illnesses are conservatively estimated by NIOSH and other researchers to be 50,000 to 60,000 annually, ten times the number of fatalities from work injuries recorded by Bureau of Labor Statistics (BLS).

BLS only records worker deaths that occur at the work site or promptly thereafter. Diseases such as cancers and asbestosis generally do not manifest until decades after exposure. The long latency period, combined with a lack of recognition and proper reporting methods, is a continuing problem. Because the magnitude of occupational diseases is not generally known, it tends to be ignored.

By 2015, the number of persons disabled from occupational illnesses and injuries is expected to reach 8.5 million. It is a disaster of monumental proportions. Unlike many other advanced nations, the United States has no comprehensive occupational health data collection and reporting system.

Even the figure of 50,000 to 60,000 occupational disease deaths is a very conservative estimate. We will not know the actual numbers until we have a proper way to track these incidents through a national comprehensive health database.

As we have lagged behind other nations in our lack of a national comprehensive medical and statistical database on occupational illnesses; we also trail in the research into the causes and consequences of occupational illnesses that would lead to improved diagnosis, treatment, prognosis, and ultimately prevention, of occupational toxic exposures and resultant diseases. Moreover, 36 states have little or no capacity to conduct epidemiological studies of occupational health.

If accurate reporting of occupational diseases and injuries existed in the United States, occupational illnesses and injuries would be among the five leading causes of illness and death in our country.

Worker deaths often cost a corporation far less than correcting a safety/health hazard in the workplace; and employers are virtually immune from prosecution for the depraved indifference that results in severe injury, toxic exposure, or death.

It is a major and costly health issue – costly in lives, and costly in dollars. The economic burden for occupational illness, injury, and death falls heavily on families and on taxpayers, with only about one-quarter of the cost being paid by workers' compensation.

Trends/Examples:
Most of us are familiar with how the asbestos industry kept secret for over three decades what it knew about how deadly to workers was their exposure to asbestos. Once that industry documentation was forced to be released, OSHA spent 10 years in research, published thousands of pages of research, and spent millions of dollars -- only to have it fought vehemently by the asbestos industry -- the same industry that knew decades earlier that asbestos killed workers. Today, we no longer mine asbestos, but we are still a large importer of asbestos in products, with continuing devastating impact on health and life.

More recently, as a result of a case brought against IBM on behalf of "clean room" workers in its semiconductor manufacturing facilities, which exposed workers to many hundreds of chemicals used in the process, IBM’s Corporate Mortality File, amassed over more than 30 years ending in 2001, was made available. Epidemiological analysis of the data on the 31,941 decedents whose data was in the Corporate Mortality File and who had worked five years or more at the identified sites, showed that “mortality was elevated due to specific cancers and among workers more likely to be exposed to solvents and other chemical exposures in manufacturing operations.”

For many, the thinking is that occupational toxic chemical exposures and resultant diseases are no longer a problem, as manufacturing has increasingly left the United States. However, toxins are everywhere: hospitals, hotels, construction, transport, maritime, farming, meat packing, food processing, auto repair, air conditioning service and repair, painting, dry cleaning, landscaping, printing and lithography, landfills – to name just a few. The biotech industry is a relatively recent addition to the list, having expanded greatly over the past 20 years in the US, creating new and major health hazards. Stem cells, genetically engineered viruses, and other advanced biotechnologies and nanomaterials expose often unprotected biotech workers in university and corporate laboratory settings to toxins to which they often are not even allowed to know to what they have been exposed. Trade secrets appear to trump biotech workers’ right to health and life.

National Focus on Individual Health:

At the same time, the national focus tends to be on what we, as individuals, can do to improve our personal health, such as stopping smoking and eating right. Meanwhile, no attention is being paid to the elephant in the room: occupational diseases caused by toxic chemical exposures in the workplace. For example: one out of 10 smokers will develop lung cancer; but 10 out of 10 workers exposed to synthetic dyes over the course of 20 years will develop bladder cancer.

PROBLEMS IN THE WORKERS’ COMPENSATION SYSTEM:

It is time to re-evaluate this entrenched and dysfunctional system that allows the maiming and killing of workers with seeming impunity.

Under workers’ compensation laws, a worker cannot sue his or her employer for injury, illness, or death. The quid pro quo is supposed to be swift and certain wage replacement and proper medical treatment in exchange for the loss of the right to sue the employer for negligence. What has happened over the years is that the freedom from
lawsuit continues to benefit employers and insurers, while worker medical treatment and wage replacement have been delayed, denied, or seriously diminished. Thus there is no enforced requirement under the law for employers and insurers to pay the actual costs of the occupational injury and disease they have allowed to occur. It is in the employer’s and the insurance company’s interest not to pay. This system, ostensibly designed to protect workers, has continued to erode workers’ rights and benefits, with far too little public and government scrutiny of its systemic failings.

Wage Replacement:

Wage replacement under workers’ compensation, intended to sustain the worker and his or her family while unable to work, continues to be shrunken by state legislatures year by year. Workers’ compensation wage replacement in 16 states falls below the poverty level for a family of four. Only 11 states are above 120% of the poverty level, and only one jurisdiction is at more than 150% of the poverty level. Moreover, even these meager amounts of compensation are achieved only after significant struggle to obtain the benefits presumably guaranteed by workers’ compensation law.

In one extensive study over a recent 15-year period, it was found that workers’ compensation costs to employers actually fell by 19% over its high in the early 1990s. While business enjoyed those significant savings, workers’ compensation benefits to workers decreased by almost double that amount, or 33%, for the same period.

Abuses in Medical Treatment:

The abuses in medical treatment under workers’ compensation are legion and varied. Themes that run throughout the experience of workers are the delays; the denial of treatment; the inadequate, inappropriate, and cursory medical treatment; inhumane treatment; and the shifting of costs that should be paid by workers’ compensation to others, including the injured/ill workers and their families. In the United States, there is a serious lack of physician expertise in occupational medicine, and workers’ compensation medicine is generally a separate entity with its own doctors, outside the normal medical pathways available to all others. It is a separate and unequal system of medical care. Virtually no attention is being paid to the etiology of occupational illnesses, and the appalling death rates resulting from them. All these factors work against effective quality medical care for injured/ill workers.

One must ask why a system of medical treatment is based on the payer’s needs, rather than on the diagnostic and treatment needs of the patient. There is no need for a separate health care system for workers. A universal health care system would better meet the health care needs of all of us, regardless of the causes of the injuries or illnesses, and at substantially less cost. A universal (Medicare for All) healthcare system will also create incentives for prevention, as well as improved care for the ill and injured.

Workers’ compensation laws, except for federal workers compensation, which is a separate system, are state laws, and are always much more heavily influenced by industry than by the concerns of workers, or the families of workers who died from their work.

Workers’ compensation insurers and their powerful lobbies, supported by employers, regularly influence state legislatures to shrink even the already meager
legislated health and wage compensation and to limit worker attorney fees, claiming that it is too costly for employers. The injured, the ill, and the families of the deceased have weak voices, if they are heard at all in state legislatures. And state legislators, who are generally ignorant of the workers’ compensation system, all too often acquiesce to the demands of the employers and the insurers.

Workers’ Compensation misses over 80% of the medical costs, over 90% of the deaths from occupational diseases:

It is estimated that workers’ compensation misses between 91% and 99% of occupational disease deaths, and between 80% and 94% of the medical costs for occupational diseases. It should be noted that one’s health insurance will not cover an illness or injury identified as a work illness or work injury. Workers’ compensation, from its inception, was never designed to cover occupational diseases, and the long latency period makes it unlikely to think that workers’ compensation coverage for occupational diseases would ever be realistic. The predominant payer for the over $300 billion annual cost of occupational illnesses and injuries is the federal government; primarily through Social Security Disability (SSDI), Medicare and Medicaid.

A better solution would be “a national program with uniform coverage of health care and adequate loss-of-earnings benefits ... independent of industry involvement and insurance industry control.” In fact, it is widely agreed that such a program would not only be effective, but would cost far less than the current system. Additionally, one might also have a general industry tax to cover the costs now paid by taxpayers.

OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION:

The federal Occupational Safety and Health Administration (OSHA) has the responsibility for setting safety and health standards and monitoring and ensuring the safety and health of the workplaces. OSHA fines for citations (violations) have been so watered down that it is often cheaper for the corporation to pay the fines than it is to provide a safe workplace.

Weak Laws and Enforcement:

If a worker is killed through the repeated and willful negligence of the employer, it is a mere misdemeanor. In its 40 years of existence, federal OSHA has referred only a minute number of cases to the Department of Justice (DOJ) for criminal prosecution. Only a fraction of even this small number of cases have been pursued by DOJ, resulting in only 79 cases where there has been a sentence of imprisonment. In order to refer a case to DOJ for prosecution, it must involve at least one worker fatality; and it is necessary to prove that it is a “willful” violation, which, at a minimum, requires proof that the same violation was repeated over a period of time. Over the ten-year period ending in 1999, OSHA reportedly deleted almost 14,000 violations per year, thus also reducing the number of repeat and willful violations. Even in those few cases when OSHA deems a citation “willful” and allows it to go to DOJ for prosecution, the crime is considered a mere misdemeanor with a maximum penalty of a fine of not more than $70,000, or imprisonment for not more than six months, or both. The criminal penalties for killing a worker are miniscule compared to those for accounting fraud, or even minor
drug use. Harming a wild animal on federal lands could result in a higher penalty under the Endangered Species Act. This is a very sad commentary on how we value worker lives.

**Political Pressure:**

OSHA has been a target of political pressure for decades. Its work has been criticized by conservatives as overly restrictive of business, and undercut by political measures that have weakened its authority. The Protecting America's Workers Act, filed in 2009, renamed and reintroduced in 2010, attempted to strengthen OSHA by, among other reforms, increasing certain civil and criminal penalties and employee protections, including protections for whistleblowers. The bill would also have covered public employees under OSHA. (Government workers are not covered under the federal OSHA, although some state OSHA programs do cover them.) The act died in committee.

A recent report by Public Citizen, notes that OSHA regulations have been delayed for as long as 31 years. Additionally it notes that only two additional chemicals have been regulated in the past 14 years, while industry develops two new chemicals a day. This inaction exacts a heavy price on workers, and by extension, on all of us, and the environment. Of the toxic chemicals to which workers are exposed that NIOSH identifies, fully 35% have no regulation, and an additional 29% have regulations that are inadequate to protect workers. The process often involves years of study, plus a 39-step review process, and must consider the cost that any new regulation will place on business, as well as the risks to worker lives.

Additionally, the current OSHA regulatory system puts the pressure on OSHA, rather than on the employer, to come to closure in an investigation. That process sometimes takes years. In the meantime, workers' safety and health suffer. Immediate abatement is needed to compel employers to abate violations as soon as they are identified.

The small number of chemicals that have been fully evaluated for their potential toxicity is a source of national embarrassment. One problem is that we put the responsibility on OSHA to prove that a particular chemical, at a specific amount, is a proven danger. We have it backwards.

**ALTERNATIVE MODELS:**

The fifteen-nation European Union (EU) has taken a far different stance from the US in its regulation of toxic, and potentially toxic, substances. EU regulations called REACH, (Registration, Evaluation, Authorization and Restriction of Chemicals) require that a chemical be found safe before it is allowed to be used. REACH regulates chemicals for toxicity at any point along the chain of manufacture, use, and disposal - the opposite of what we do in the United States. REACH requires registration of 30,000 chemicals in use in industry, and many that we allow here have not been allowed in the EU in recent years. Most EU businesses think that the costs of regulation are a price worth paying. According to REACH, the cost of regulation is small compared to the cost savings in health and lives. That cost has been estimated at 3.5 billion euros, or less than one euro per person per year over the entire eleven-year phase-in period, and would add to chemical costs 1/16 of one percent. If universal health care existed in the United States,
would we not be more likely to consider the health costs of toxic exposures, and moreover, the health benefits of effective regulation of toxic substances?

**CONCLUSIONS:**

Limited budget and resources, difficult political battles for tougher regulatory standards, ridiculously low fines, low probability of inspection, miniscule possibility of prosecution and conviction, negotiated agreements for reductions of “willful” to “unclassified” violations, and agreements to no admission of wrongdoing; all add up to no incentives for employers to provide safe and healthy workplaces in compliance with standards, and no deterrent to flagrant violations. It is tantamount to a license to kill workers with impunity.

The U.S. systems favor corporations over people—with dire, and long-term, consequences. We are subsidizing the industries that are hurting our workers, their families, and our environment. When workers’ rights and protections are chipped away, public health and safety are also at risk. Critics of OSHA complain that government regulations are “job killers.” The Massachusetts Coalition for Occupational Safety and Health (MassCOSH) frames it correctly: workers should not be forced to choose between their safety and a paycheck.

According to a recent survey by the Organization for Economic Cooperation and Development (OECD), when we are compared to other countries on a number of indicators of worker protections, we rank dead last, not only against the EU countries, but other countries as well.  

**RECOMMENDATIONS:**

**Globally Harmonized System:**

We “need to close the gap between workplace and environmental hazards.” OSHA PELs may be too flawed and outmoded a process. And while not the whole answer, the US adopting the UN’s Globally Harmonized System of Classification and Labelling of Chemicals (GHS) is seen as a foundation for an “internationally – harmonized” approach, and one that could control chemical exposures, thus protecting both people and the environment.

We also need to put accountability into this system: we need tort liability and meaningful criminal liability.

**Tort Liability:**

If employers and workers’ compensation insurers are not paying the preponderance of the costs of the worker injuries and occupational illnesses that employers cause, there’s no incentive for them to improve workplace health and safety. We must have tort liability. This in itself will not address the issues of occupational diseases, but to continue with workers’ compensation as the exclusive remedy is to protect employers and insurers from accountability for the corporate negligence that injures or kills.
Criminal Liability:

But tort liability by itself is not sufficient. We also must have viable criminal liability, mandatory meaningful minimum penalties for violations that result in serious bodily harm or death, allow felony prosecutions against employers who commit willful violations that result in death or serious bodily illness or injury, and extend such penalties to responsible corporate officers. Criminal sanctions can be an important deterrent to irresponsible business decisions because business crime is rational. These are not impulsive crimes.24

Unions:

Unions are also a critical component of the solution. No worker is likely to speak out about a dangerous, unsafe, or toxic workplace on his or her own. Only with union support is one likely to draw attention to an employer’s health and safety violations. Unions, however, have been dwindling in our nation in recent years. Public-sector unions now have the strongest presence, which is why they are under increasing attack by conservatives.

National Program:

The fact that workers’ compensation is a separate state-by-state system, including the territories and the District of Columbia, plus several federal programs, explains why it is so absurdly inefficient and costly. As stated previously, there needs to be a single system with uniform coverage and benefits, managed under a national program. 25 One possibility is to integrate such a program into the SSDI program, since the latter is already covering a major portion of the costs.

Health Care For All:

A Medicare For All system that includes healthcare for workers is a logical, cost-effective way to undo the abuses so prevalent in medical treatment under workers’ compensation.

The sheer magnitude of occupational illnesses cries out for our attention and resolution. Justice demands that we reform these systems that now so heavily favor the interests of employers and insurers over the safety and health of workers, and by extension, families, communities, and the environment.

EndNotes:


25. op. cit. LaDou, 2010, p.299.

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