



WAL★MART**WATCH**

WAL-MART'S WORKER COMPENSATION PROGRAM:

How Wal-Mart's Workers' Compensation Practices
Are Costing Its Workers, the States and Taxpayers

June 2007

Workers' Compensation and Wal-Mart

"Over the last seven years, Wal-Mart has "repeatedly and unreasonably" delayed giving injured workers the benefits they were owed under workers' compensation laws, and, in some cases, Wal-Mart employees were not allowed to file workers' comp claims at all."

— Order issued by the Washington Department of Labor and Industries

Our modern system of workers' compensation laws is a result of the rapid industrial growth taking place within the United States during the 19th and early 20th centuries. With the industrial boom came a corresponding increase in work-related accidents; during that time, the only recourse for a worker seeking compensation for an on-the-job injury was to sue their employer for negligence. In the early 20th century, a gradual increase in state legislation geared towards compensating injured workers appeared.² Wisconsin enacted the first workers' compensation law in 1911, and by 1920 there were just eight states that had yet to enact similar statutes.³ These laws were supposed to benefit both workers and employers by allowing workers to receive prompt payment for work-related injuries, and by insulating employers from paying for pain and suffering or facing punitive damages.⁴

By 1949, all states had adopted a workers' compensation system of some sort.⁵ While there are federal workers' compensation statutes covering longshoreman and harbor workers for example, for the most part workers' compensation regulations are the jurisdiction of individual states.⁶ Workers' compensation laws share many similarities, but important differences exist as well. In five states, the state is the sole provider of workers' compensation insurance, while in 14 states, state funds compete with private insurers, giving the employer the option to use either.⁷ Over the years, the scope of coverage has broadened considerably. In 1972, the National Commission on State Workmen's Compensation Laws instituted performance standards, which many states amended their laws to meet.⁸ Benefits were expanded and coverage widened to include classes of employees not previously covered.

Many large companies now have the option to self-insure. These companies often can estimate actuarially routine workers' compensation costs, and may prefer self-insurance because they do not have to pay a third-party administrator. Businesses that self-insure their employees must prove that they are financially able to cover the costs of work-related injuries.⁹ Self-insurance, however, may increase the potential for abuse by the employer, as claims are handled in-house.

Apart from the United States Government, Wal-Mart is the largest employer in North America. The average Wal-Mart Supercenter covers over 200,000 square feet of land, and contains everything from auto parts to clothing to groceries. The volume of business a retailer the size of Wal-Mart does requires intense manual labor to keep shelves stocked and aisles clean. Such a large volume of business also creates an increased risk of worker injury and the number of workers' compensation claims that may result. Due to Wal-Mart's record of handling post-injury compensation, over the past decade, a number of states have been compelled to more intensely scrutinize Wal-Mart's workers' compensation policies.

Problems with Wal-Mart's often lengthy workers' compensation process and rates of compensation are pervasive, ranging from contesting and failing to pay out on valid claims, to intimidating workers seek-

ing to file claims and retaliating against those who do. The company has forced employees with legitimate claims to fight through every step of the legal process simply to receive the compensation they rightly deserve. Particularly egregious are the circumstances where Wal-Mart's defiance in processing claims has allowed a medical condition to worsen simply due to the passing of time without proper medical care. In addition, workers often have to turn to public assistance in order to receive minimal health care and for financial support while out of work. In essence, Wal-Mart effectively has shifted a large percentage of its work-related injury costs onto states and state taxpayers.

This paper will discuss Wal-Mart's unwillingness to operate its workers' compensation program as required by current state laws, as well as suggest legislative changes that could be made for better reporting transparency at the state level. Changes such as the meaningful reporting requirements adopted in Maine have placed companies such as Wal-Mart on notice that they are being watched, and that across-the-board challenging of workers' claims will not be tolerated.

Wal-Mart's Workers' Compensation Issues Have Included:

- In 2001, the State of Washington Department of Labor and Industries made the unprecedented move of threatening to seize control of Wal-Mart's entire injured worker program, after the company showed itself "unwilling or unable to manage its workers' compensation program as required by law."¹⁰ A decertification case ultimately was settled, but Wal-Mart is prohibited from self-administering its workers' compensation program claims in Washington until 2010.
- In 2004, Maine amended the state's Workers' Compensation Act and began tracking workers' compensation payments and claims challenges, finding Wal-Mart's challenging of workers' compensation claims was "off the charts."
- A class action was filed in 2007 in Oklahoma for retaliation against employees who filed workers' compensation claims. The charges include cutting hours, transferring employees to less desirable positions, and termination. There are over 30,000 people employed by Wal-Mart in Oklahoma.
- Individual stories reflect a policy, whether formal or informal, of fighting claims regardless of validity, and delaying payments as long as possible. The result is an increase in the number of employees forced onto federal and state programs to pay for treatment and subsidize lost wages, effectively shifting the cost of compensation workers away from Wal-Mart and onto taxpayers.

Workers' Compensation: A Primer on the Process

Forty-nine states mandate workers' compensation coverage for workers within their boundaries.¹¹ Although workers' compensation laws differ from state to state, the claims processes under most state statutes are similar. Generally, workers' compensation statutes allow employees to file claims for inju-

ries resulting from work-related injuries. The employee may recover medical expenses and lost wages that are the result of a temporary or permanent disability.

Notice, Reporting and Appeals

In most states, employees are required to notify their employer of a work-related injury within a certain time period following the accident. Often, employers are required to keep records of injuries, which must then be reported to the workers' compensation board and to the company's insurer within a set period of time (unless the company is self-insured).¹² If liability is accepted, a notice of compensation payable will be issued to the employee.

Once an employer has been notified of a work-related injury, states require that employer to report the injury to its insurance carrier within a specified amount of time. In Wisconsin, for example, insured employers must report any claim of an injury to their insurance carrier within seven days. Self-insured employers and insurance carriers must report injuries resulting in four or more days lost time from work to the Wisconsin Workers' Compensation Division within 14 days of the injury.¹³ In Minnesota, an employer has 10 days from knowledge of claim to report it to its insurance company. If a disability lasts longer than three days, the insurer must then file a "first report of injury" form with the Minnesota Department of Labor and Industry. The insurer then has the duty to investigate claims, and if a claim is accepted, the insurer has 14 days from the day the employer was notified of the injury to start paying workers' compensation benefits.¹⁴

In general, if coverage is denied on an injury, the employee has the option to file a claim with the proper state agency. Generally, the time to file this claim is restricted to within one to three years from the date of injury. Once a claim is decided, the losing party can appeal all the way to the state supreme court. As an example, in 1993 the state of Kentucky established the Workers' Compensation Appeals Board to handle appeals of orders/awards from workers' compensation administrative law judges. The Appeals Board can grant or deny compensation and increase or diminish any award of compensation. It was created to take the place of the state district courts in the appeals process; thus, any party wishing to appeal a final order from the Workers' Compensation Appeals Board will take his or her case to the Kentucky Court of Appeals.¹⁵ Similarly, in Wisconsin, appeals from the Wisconsin Labor and Industry Review Commission ultimately make their way to the Wisconsin Court of Appeals.¹⁶

Requirements for Self-insurance

Typically, workers' compensation systems are administered in-state by the commission or board responsible for ensuring compliance with laws and investigating and handling disputed workers' compensation claims.¹⁷ In many states, such as Washington for example, a number of employers pay premiums into a state fund which then pays out claims. Larger employers such as Wal-Mart with millions of dollars in assets are allowed to self-insure, managing their own claims and paying them out of pocket.¹⁸ Every state but North Dakota and Wyoming allows companies to self-insure.¹⁹ Large companies may prefer this method because, for example, they do not have to pay a third-party administrator, but it also serves to increase the potential for abuse. Companies such as Wal-Mart who self-insure have a profit incentive to deny benefits – every dollar they avoid paying out in claims is a dollar the company keeps.²⁰

Wal-Mart operates its workers' compensation system through Claims Management Inc., a wholly owned subsidiary of Wal-Mart Stores, Inc.²¹ In order to become, and remain, self-insured, employers must meet certain requirements. In New York, employers must apply to and be approved by the New York Workers' Compensation Board's Office of Self Insurance. Employers must go through an application process, and post a security deposit to be used in the event an employer defaults on its obligation to provide workers' compensation benefits to its employees.²² The security amount is based on the employer's payroll, and each year it is reviewed for adequacy based on payroll changes and the employer's reported incurred losses. Similarly, California requires self-insurers to be certified by the state Department of Industrial Relations, to post a security deposit – adjusted annually to cover liabilities incurred – and to submit to self insurance plan audits.²³ In Colorado, employers applying for self-insurance must regularly employ 300 or more employees in Colorado or be a division or subsidiary of a parent company that has a minimum of \$100,000,000 in assets.²⁴

How Wal-Mart is Failing Its Workers and the States

Wal-Mart is failing the system by unreasonably delaying paying lawful benefits, and by challenging even clearly legitimate workers' compensation claims. What the workers' compensation process relies on, and where Wal-Mart has come up short, is the efficiency with which the system is supposed to run. The no-fault system is meant to ensure that workers receive the medical attention and compensation they need, while insulating employers from private lawsuits. A coordinated effort between employer and employee, physician and insurance representative, means quicker recovery time for employees and lower costs to the state. Injured workers who do not receive timely benefits or who must fight Wal-

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Mart through every step of the legal process often end up stuck in financial debt, forced to turn to public assistance for healthcare, unemployment benefits, and so on. Injured workers may seek to avoid the legal system altogether, as attorney costs can boost claim costs by 12 to 15 percent.²⁵

As a general matter, employers such as Wal-Mart have a financial interest in persuading employees to resolve their injury claims outside of the

workers' compensation system.²⁶ If an injured worker files a state workers' compensation claim, Wal-Mart pays 100% of those expenses if the claim is successful,²⁷ but if Wal-Mart can convince workers to submit medical bills to a health insurance carrier, they generally pay much, much less.²⁸ With over half of Wal-Mart employees covered by insurance other than Wal-Mart insurance, or with no insurance at all, Wal-Mart pays nothing if it can convince workers to seek payment for injuries through means other than a workers' compensation claim.²⁹

Employers in general are paying less and less of workers' compensation costs associated with work-related illness and injury.³⁰ Federal and state government programs such as Medicaid, Social Security, and other poverty programs, subsidize the remaining costs. Employers like Wal-Mart have effectively shifted the costs of work-related injuries and illnesses, leaving the rest of society to subsidize unsafe work practices.

Wal-Mart Scrutinized in States

Washington State Takes Over Wal-Mart Workers' Compensation

In 2001, the State of Washington Department of Labor and Industries held Wal-Mart accountable for failing to properly administer its workers' compensation program. Repeated complaints dating as far back as 1993 caused the department to threaten Wal-Mart with seizure of its workers' compensation program. The seizure of an entire workers' compensation program would have been an unprecedented move, a measure taken previously only when an employer was going bankrupt.³¹ Although Washington's Department of Labor and Industries eventually allowed Wal-Mart to remain self-insured through CMI, the settlement between the two has prohibited the retailer from self-administering its workers' compensation claims in Washington for eight years, until 2010.

The decision to investigate Wal-Mart's workers' compensation practices arose due to the perception that the company treated its workers poorly post-injury. According to the Washington Department of Labor and Industries, Wal-Mart "repeatedly failed" to respond to worker claims or pay workers their benefits in a timely way, it prematurely cut off employees' replacement wages or "miscalculated" them, and it showed "consistently poor record keeping" and "failed to provide adequate first aid facilities."³² The Department of Labor & Industries moved to seize control of Wal-Mart's program after five separate audits – conducted between 1993 and 1999 – revealed that the company failed to acknowledge legitimate claims, and was not processing claims in a timely fashion.³³

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Wal-Mart and the Department of Labor & Industries eventually settled the self-insurance dispute. The settlement, reached in 2002, allows Wal-Mart to remain self-insured, but prohibits the company from self-administering its workers' compensation claims in the state of Washington for at least eight years.³⁴ The terms of the settlement require Wal-Mart to hire an independent third-party administrator to handle claims and do not allow the retailer to apply to once again self-administer its self-insurance program until 2010.³⁵ Wal-Mart claims now: (1) must be processed by the company more quickly than is required of other self-insured companies, (2) Wal-Mart has been given more stringent filing and reporting deadlines, and (3) the handling of claims is being very closely scrutinized by Department of Labor and Industry auditors.³⁶

Wal-Mart Fails California Audit

For nearly twenty years, California's Department of Industrial Relations has released annual workers' compensation audit reports from the Division of Workers' Compensation. Audit targets are selected

based on a number of criteria, including: 1) complaints to the Division of Workers' Compensation regarding claims handling; 2) failure to meet or exceed Full Compliance Audit Performance Standards; and 3) failure to pay or appeal a Notice of Compensation Due ordered by the Audit Unit of the Division of Workers' Compensation.³⁷ The combination of these negative factors led the California Division of Workers' Compensation to audit both Wal-Mart and Claims Management, Inc. in 2002.

The State of California performed its audit the same year that Wal-Mart and Washington settled their workers' compensation dispute. Based on the aforementioned criteria, the state chose 70 entities to audit. Out of those 70 audit subjects, Claims Management Inc., the Wal-Mart subsidiary responsible for handling the retailer's workers' compensation claims, rated 67th in terms of performance rating

once the audits were completed.³⁸ Audit results and performance rating in California are based in large part on the frequency of late or non-payments and in that regard Wal-Mart was right at the top of the list.³⁹

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Under the California Department of Industrial Relations system, profile audit review ratings are based on the frequency and severity of late or unpaid compensation, with a weighting component that places emphasis on violations involving employers/insurance providers failing to pay any compensation whatsoever.⁴⁰ CMI was one of only five audit subjects that failed to meet profile audit review standards, out of the 70 that were audited.⁴¹ CMI also had more notices of unpaid

compensation than any other subject on the audit list and more than double the notices of unpaid compensation than all but eight subjects.⁴²

As a result of the audit, Claims Management, Inc. was required to pay out all unpaid compensation. In addition, penalties for late or unpaid compensation pursuant to California Labor Code 129.5(c)(2) were assessed. The total amount paid out by Claims Management, Inc. - \$20,927 in unpaid compensation plus \$34,470 in penalties – sounds minor, but it is indicative of Wal-Mart's claims handling. More importantly, this serves as another example of how Wal-Mart consistently drags its feet when it comes to paying out valid workers' compensation claims. A multi-billion dollar corporation that penny-pinches on the backs of its workers injured on the job has obvious disregard for those workers, for the state laws under which it operates and for the taxpayers forced to subsidize treatment when those workers end up in the hospital or on public assistance.

Maine's Monitoring, Audit and Enforcement Program

In 1997, the Maine Workers' Compensation Act was amended to establish a Monitoring, Audit and Enforcement Program.⁴³ In January of 2004, as part of its new monitoring requirement, the Maine Workers' Compensation Board began tracking employer reporting of both Memoranda of Payment ("MOPs") and Notices of Controversy ("NOCs").⁴⁴ A MOP is filed every time an employer accepts and pays out a workers' compensation claim, and a NOC is filed every time a claim is challenged. The Workers' Compensation Board has found MOPs and NOCs to be efficient tools in tracking a particular company's

workers' compensation practices. Less than two years ago, those two tools led Maine to question formally Wal-Mart's handling of its workers' compensation program within the state.

A primary goal of monitoring by the state is to avoid cost shifting – unreasonable claims controversy shifts costs onto the workers, the Workers' Compensation Board, and most importantly taxpayers.⁴⁵ Injured workers that don't receive timely payment can end up in debt and forced to turn to public assistance. Federal and state programs such as Medicaid and Social Security are subsidizing more and more of the costs associated with workplace illnesses and injuries, while employers like Wal-Mart pay an increasingly smaller share.⁴⁶ Employers have effectively shifted the costs of work-related injuries and illnesses, forcing the rest of society to subsidize unsafe work practices.

Maine is currently the only state that tracks MOPs and NOCs quarterly, but it is a system that could be adopted into state workers' compensation programs on a nationwide basis.⁴⁷ Maine's system allows the Workers' Compensation Board to both monitor the timeliness of an insurer's response and compare the number of Memoranda of Payment versus Notices of Controversy that each insurer files.⁴⁸ When an initial claim is made, an employer has within 14 days to file either a Memoranda of Payment if it accepts the claim or a Notice of Controversy if it chooses to challenge. The more Notices of Controversy a company files, the more red flags are raised. Once an employer begins challenging more than half of the claims made against it, officials in Maine start to take an interest.⁴⁹

Employers have effectively shifted the cost of workplace injuries away from themselves. Federal and state government programs, such as Medicaid, Social Security, and other poverty programs, subsidize the remaining costs.

Wal-Mart first came under review in 2004 for contesting an unreasonable number of claims.⁵⁰ In the first three quarters of 2004, Wal-Mart filed NOCs on nearly 94 percent of claims made, figures that were "off the chart" according to Workers' Compensation Board officials.⁵¹ By comparison, over the same time period the state's largest employer – a grocery chain – contested only 17 percent of its workers claims.⁵² Despite meetings between state officials and Wal-Mart representatives and legal counsel, the ratio of NOCs to MOPs remained unsatisfactory in 2005, leading to an audit.⁵³

In addition to the high number and percentage of NOCs, the Workers' Compensation Board also received seven Complaints for Audit in the period of a year and a half – typically the Board only receives one or two complaints per year for any given company.⁵⁴ Complaints for Audit are used to report wrongdoing on the part of an insurer, and may be filed by anyone related to a particular workers' compensation case.⁵⁵ The complaints included one of particular note filed by a hearing officer – a judge who hears litigated workers' compensation claims – something the current Deputy Director for Monitoring, Auditing, and Enforcement had never seen before.⁵⁶

As for the effectiveness of the monitoring system, there has been improvement in the number of Notices of Controversy filed since Maine first began actively looking into Wal-Mart and Claims Management Inc. In 2004, Wal-Mart filed Notices of Controversy on nearly 94 percent of workers' compensation claims made.⁵⁷ In 2005 the number remained high, as Wal-Mart filed NOCs on 74 percent of claims, though taking into account only the 3rd and 4th quarters of 2005 saw Wal-Mart filing NOCs at a 51 percent rate. That percentage remained constant into the first two quarters of 2006; Maine's dedication

to tracking workers' compensation claims appears to be normalizing Wal-Mart's system in relation to other self-insurers in the state.⁵⁸ Maine, through its overhaul of the Maine Workers' Compensation Act, has shown a commitment to ensuring the health and well-being of workers within its borders, and a commitment to saving money for the state and its taxpayers.

Oklahoma Workers File Workers' Compensation Class Action

Workers, too, are beginning to pressure Wal-Mart as a result of the company's workers' compensation practices. In Oklahoma, three employees have filed suit alleging Wal-Mart retaliated against workers who file workers' compensation claims.⁵⁹ The lawsuit alleges that after filing claims for on-the-job injuries, Wal-Mart reduced their hours, cut their pay or demoted them, and one former employee claimed she was forced to resign as a condition of her workers' compensation settlement, a condition that would violate Oklahoma law.⁶⁰ The Plaintiffs in the case are seeking a determination of whether Wal-Mart has a de facto policy of discouraging the filing of workers' compensation claims and punishing those who initiate claims.⁶¹

Attorneys in *Mathes v. Wal-Mart Stores* filed for class certification on February 26, 2007, and the charges are sobering. Plaintiffs allege that Wal-Mart has a common policy of seeking resignations from employees while in the process of settling workers' compensation claims.⁶² Wal-Mart has admitted to an across-the-board policy precluding anyone who settles a workers' compensation claim and resigns as part of the settlement from ever working at Wal-Mart again, effectively a lifetime ban on employment.⁶³

As a general matter, Wal-Mart has a clear financial interest in persuading employees to resolve their injury claims outside of the workers' compensation system.⁶⁴ If an injured worker files a state workers' compensation claim, Wal-Mart pays 100% of those expenses if the claim is successful,⁶⁵ but if Wal-Mart can convince workers to submit medical bills to a health insurance carrier, they generally pay no

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more than 60% of the cost.⁶⁶ With over half of Wal-Mart employees covered by insurance other than Wal-Mart insurance, or with no insurance at all, Wal-Mart pays nothing if it can convince those workers to seek payment for injuries through means other than a workers' compensation claim.⁶⁷ In addition, store manager bonuses, which can make up a large portion of their yearly compensation, are affected by the reserves set on work-

ers' compensation claims.⁶⁸ Store managers have incentive to discourage, either directly or indirectly, workers from pursuing workers' compensation claims that would raise reserves and have a negative effect on bonuses.⁶⁹

Documents from *Mathes v. Wal-Mart* reflect the lengths Wal-Mart will go to in order to avoid paying out claims. Case exhibits contain admissions by Wal-Mart managers acknowledging they have attended workers' compensation hearings in order to frighten or intimidate claimants.⁷⁰ Claims are routinely denied even after investigations have been made and adjustors have determined the injury to be within the course and scope of employment.⁷¹ These routine denials of even clearly compensable claims force

workers to go through a protracted process to recover and makes it more difficult to receive immediate wages and treatment. A backlog of legal challenges burdens already overwhelmed court systems. This practice of challenging or discouraging claims also leaves more workers looking for alternative means of finding and paying for medical services. Often uninsured or underinsured, these workers are likely to seek treatment at hospitals and public clinics, courtesy of state tax dollars.

An attorney with Foshee & Yaffe, the law firm representing the workers involved in Mathes, stated plaintiffs' belief that "this is a company-wide policy that potentially affects thousands of people...there are over 30,000 people employed by Wal-Mart in Oklahoma and 1.6 million nationwide. There are a ton of folks that could be affected."⁷² The firm has spoken with numerous individuals who feel as though they have been wrongly treated after filing workers' compensation claims, or who were too fearful to file in the first place.⁷³ As the firm works to collect more stories, Wal-Mart, still entangled in the largest class action suit in history,⁷⁴ may ultimately face another large nationwide class action as a result.

Wal-Mart Workers' Compensation Controversies: Examples

The following stories serve as concrete examples of the damage Wal-Mart's current workers' compensation procedures inflict on employees injured while working for the retailer. Where Wal-Mart will not pay as state premiums require, or where it does so belatedly, workers, states and the taxpayers ultimately pay for injuries and the aftermath.

Winifred Snider, Washington

In the summer of 1998, Snider fell from an 18-foot ladder while stacking boxes of shower curtains. She broke her wrist in two places, and once the cast was removed it was found she suffered from a rare disorder called RSD in which the body basically disowns a traumatized limb. Treatment to regain function in the arm would have cost approximately \$17,000, but for weeks Wal-Mart refused to authorize it. In the end, Snider lost use of her arm and hand. A rehabilitation expert involved with the case stated that Wal-Mart lost reports or denied receiving them at every step of the claim process – ultimately, he wrote to Wal-Mart's attorney: *"It is my opinion that Wal-Mart's delay...during a crucial time in this disease process negatively impacted her (Snider) long-term use of the right upper extremity...It may have been possible to prevent the spread of this syndrome with more timely treatment."*⁷⁵

Linda Monroe, Missouri

Monroe was injured in May 2000, while stocking 50-pound sacks of dog food. While lifting one sack, she felt a pop and a rip followed by severe abdominal pain, and after visiting an emergency room it was revealed she had suffered a hernia. Soon afterwards, Wal-Mart informed Monroe that the company would not compensate her for her medical bills. After numerous legal challenges, Wal-Mart finally paid Monroe's medical bills in August 2004, more than four years after she originally suffered her injury. The agreement came after a doctor for Wal-Mart examined Monroe and determined her injuries were work-related, then refused Wal-Mart's request to reconsider his diagnosis. Wal-Mart paid the medical expenses after the Missouri Labor and Industrial Relations Committee upheld an administrative judge's finding that Monroe deserved the compensation. In the Commission's ruling, a Labor and Industrial Relations Commission member wrote: *"[Wal-Mart] consistently interposes defenses which*

have little merit and seeks the benefit of technicalities to avoid promptly addressing its responsibilities...It is time the commission recognize the action of this employer for what it is a callous and practiced disregard for our laws and its employees.”⁷⁶

Teresa Ford, Missouri

Ford, whose back was injured on the job, received a temporary total disability award in June 1998. Under the terms of the award, Wal-Mart had a responsibility to continue to provide for Ford’s treatment even after an employer-approved doctor found that she had reached maximum medical improvement six months after undergoing back surgery. As of June 2000, Wal-Mart had paid only 1/3 of Ford’s treatment bill, refusing to pay the remainder which resulted in a stoppage of treatment. After appealing the award multiple times, Wal-Mart was finally ordered to pay the more than \$20,000 in outstanding medical expenses plus nearly \$40,000 in penalties for non-compliance. Even though the initial award was made in 1998, Wal-Mart appeals dragged the case out until 2005. Said Ford’s attorney: *“I probably would not have pursued the penalty claim had it not been for Wal-Mart being such a pain in the case...I mean, they’re the ones that actually originally appealed. So they cost themselves a lot of money.”⁷⁷*

Sandra Clark, North Carolina

Clark won an eight-year fight against Wal-Mart to continue receiving disability payments. In 1998 at 64-years-old, Clark was asked to climb a 10-foot ladder and move a decorative sled above her head. The movement left Clark – who has osteoporosis – with fractured vertebrae and unable to work. Though required to pay \$154.91 each week in compensation, Wal-Mart applied in 2000 to stop payments. The resulting legal battle lasted until mid-2006, when Clark finally won lifelong disability payments and treatment for her back pain.⁷⁸

Conclusion

Time after time, Wal-Mart has shown an unwillingness to operate its workers’ compensation program as required by current state laws. Wal-Mart has maintained that incidents such as those described above are not representative of their workers’ compensation program as a whole, and yet case after case from across the country suggest the problems with Wal-Mart’s workers’ compensation policies, whether formal or informal, are pervasive. Whether contesting and failing to pay out on valid claims, or intimidating workers seeking to file claims and retaliating against those who do, Wal-Mart often forces employees with legitimate claims to fight through every step of the legal process just to receive the compensation they rightly deserve. In the interim, workers often have to turn to public assistance in order to receive health care and make up for lost wages, and support their families.

The State of Washington investigated Wal-Mart’s practices when it became clear that they were contesting an outstanding number of what were found to be legitimate claims. Similar complaints led to audits in California. The sheer number of challenges to workers’ compensation claims filed by Wal-Mart in Maine put state officials on notice that Wal-Mart treats its injured workers differently than other employers do. The class action lawsuit filed in Oklahoma may eventually go beyond that state’s borders.

Though just a small sample of states, these egregious examples raise serious questions: Is this a nationwide epidemic? Would investigation by additional states reveal in Wal-Mart a company that has effec-

tively shifted the costs of its employee's work-related injuries and illnesses onto the rest of society? Are the states, and their taxpaying citizens, subsidizing Wal-Mart's unsafe work practices?

With no states possessing the same rigorous reporting requirements as Maine, it is difficult to quantify the numbers of employees who find that their on-the-job injury is only a precursor to a lengthy and frustrating claims process with Wal-Mart. To the state's credit, the success of Maine's workers' compensation system has shown the impact that a well constructed monitoring and enforcement program can have. In Maine, Wal-Mart has improved its compliance and has actively worked with the state to continue its improvement.

Reviewing audits in Washington, California, and Maine leaves little doubt that Wal-Mart and its private insurer, Claims Management, Inc., appear to have difficulty complying with workers' compensation requirement across the country. Whether these compliance issues stem from Wal-Mart's insistence on running its workers' compensation program out of its home state of Arkansas, or from a policy of aggressively fighting workers' compensation claims, the implementation of simple monitoring and reporting measures can begin to curb Wal-Mart's all-out denial of claims and help injured workers begin to receive the payments they deserve.

End Notes

- 1 Mark D. Fefer. "Attention Wal-Mart workers: Please do not report injuries," *Seattle Weekly*, April 18, 2001.
- 2 Insurance Information Institute. "Workers' Compensation," March 2007, online at <http://www.iii.org/media/hottopics/insurance/workerscomp/>.
- 3 Id.
- 4 Randy Rabinowitz. "Give Workers the Benefit of the Bargain," Workers Injury Law & Advocacy Group, Workers First Watch Newsletter, April 2005.
- 5 Insurance Information Institute, supra note 2.
- 6 Edward Priz. "Workers' Compensation 101," online at <http://www.Entrepreneur.com>.
- 7 Id.
- 8 Insurance Information Institute, supra note 2.
- 9 Id.
- 10 Fefer, supra note 1.
- 11 The exception is Texas, where workers' compensation coverage is elective. Texas is the only state in which workers' compensation coverage is truly optional.
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- 13 Wisconsin Dept. of Workforce Compensation. "Process for Handling Work Injuries and Illness," online at http://www.dwd.state.wi.us/wc/employers/handling_injuries.htm.
- 14 Minnesota Department of Labor and Industry. "An Employee's Guide to the Minnesota Workers' Compensation System," online at <http://www.doli.state.mn.us/guide.html>.
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- 17 Insurance Information Institute, supra note 2.
- 18 Fefer, supra note 1.
- 19 U.S. Department of Labor: State Workers' Compensation Laws. Table 1: Type of Law and Insurance Requirements for Private Employment, January 6, 2006, online at <http://www.dol.gov/esa/regs/statutes/owcp/stwclaw/tables-pdf/table1.pdf>.
- 20 Fefer, supra note 1.
- 21 Wenatchee Business Journal, Inc. "State L&I settles with Wal-Mart," Wenatchee Business Journal, March 1, 2002.
- 22 New York State Workers' Compensation Board. "Resources for Self-Insured Employers," online at http://www.wcb.state.ny.us/content/main/Self_Ins_Employers.jsp.
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- 24 Colorado Department of Labor and Employment. "Workers' Compensation," online at <http://www.coworkforce.com/dwc/FAQs/EmployerFAQs.asp#selfinsured>.
- 25 Insurance Information Institute, supra note 2.
- 26 Plaintiffs' Motion for Class Certification ¶ 9, *Mathes v. Wal-Mart*, Case No. CJ-2005-343 (Oklahoma District Court of Canadian County 2007).
- 27 Id at ¶ 9.
- 28 Id at ¶ 9 (noting that after consideration of the injured workers' portion of the premium payment and payment of co-pays and deductibles, only approximately 56% of the medical bill is paid for with Wal-Mart money).

29 Id at ¶ 9.
30 Rabinowitz, supra note 4.
31 Fefer, supra note 1.
32 Id. (Fefer)
33 Robert Nelson. "L&I settles Wal-Mart decertification case; workers win protections,"
Washington Dept. of Labor and Industries News, February 14, 2002.
<http://www.lni.wa.gov/news/2002/pr020214a.asp>
34 *Wenatchee Business Journal, Inc.*, supra note 21.
35 Nelson, supra note 33.
36 Id. (Nelson)
37 California Department of Industrial Relations: Division of Workers' Compensation. "2003 Audits
of Workers' Compensation Insurers, Self-Insured Employers, and Third-Party Administrators,"
April 1, 2004. See also Title 8, California Code of Regulations, Section 10106.1(c).
38 California Division of Workers' Compensation Administrative Director's 2003 Audit Ranking
Report.
39 The audit process proceeds as follows: The Division of Workers' Compensation does an initial
profile audit review and assesses a rating based on a sample of randomly selected indemnity
claims. Ratings are calculated based on a number of factors, including: 1) frequency of claims
with unpaid compensation and the amounts of unpaid compensation; 2) frequency of claims
with violations involving late first temporary or permanent disability payments; and 3) fre-
quency of claims with violations involving late subsequent (scheduled) indemnity payments.
40 California Division of Workers' Compensation, supra note 38.
41 Id.
42 Id.
43 Maine Public Law 1997, Chapter 486; establishing a Monitoring, Audit, and Enforcement
("MAE") program.
44 Christie Toth, "The NOC on Wal-Mart," *The Portland Phoenix*, June 3-9, 2005.
45 Id.
46 Rabinowitz, supra note 4.
47 Id.
48 Id.
49 Rabinowitz, supra note 4.
50 Christie Toth, "Maine to audit Wal-Mart," *The Portland Phoenix*, July 22-28, 2005.
51 Id.
52 Toth, supra note 44.
53 Id. For the complete Compliance Audit Report of Claims Management Inc., see:
<http://www.maine.gov/wcb/departments/mae/Audit/CMIFinalAuditReport.rtf>
54 Toth, supra note 50.
55 Id.
56 Id. The hearing officer heard medical reports from physicians for both the worker and
Wal-Mart, and both agreed the injury was work related. In his complaint, the judge stated that
such a case should never have even made it to a hearing, yet Wal-Mart had filed NOC anyway.
57 Toth, supra note 50.
58 2005 and 2006 Compliance Reports for Claims Management Inc. and Wal-Mart can be found
online on the Maine Workers' Compensation Board website:
<http://www.maine.gov/wcb/departments/mae/mae/Compliance.htm>.
59 Sean Murphy, "Wal-Mart workers file retaliation lawsuit," *Associated Press*, July 7, 2005.

- 60 Id.
61 Plaintiff Motion for Class Certification, *supra* note 26 at p.15.
62 Id at ¶ 7.
63 Id at ¶ 8.
64 Id at ¶ 9.
65 Id at ¶ 9.
66 Id at ¶ 9 (noting that after consideration of the injured workers' portion of the premium payment and payment of co-pays and deductibles, only approximately 56% of the medical bill is paid for with Wal-Mart money).
67 Id at ¶ 9.
68 Id at ¶ 10.
69 Id at p.18.
70 Id at ¶ 17.
71 Id at ¶ 17.
72 Id at ¶ 17.
73 Tricia Pemberton. "Three sue Wal-Mart over retaliation claim," *Daily Oklahoman*, July 7, 2005.
74 See *Dukes v. Wal-Mart Stores, Inc.*, 222 F.R.D. 137 (N.D.Cal.2001). Information online at http://www.walmartclass.com/public_home.html.
75 Fefer, *supra* note 1.
76 Jim Suhr. "Wal-Mart ordered to pay legal bills of ex-worker who sued over injury," Associated Press, May 5, 2005.
77 Donna Walter. "MO Court of Appeals assesses penalty against Wal-Mart for not paying injured employee's medical bill," *St. Charles County Business Record*, February 8, 2005.
78 Titan Barksdale. "Long pay fight won," *Winston-Salem Journal*, July 18, 2006.

Additional Links

Mathes v. Wal-Mart class action <http://www.wmclass.com/default.htm>

Foshee & Yaffee <http://www.fosheeyaffe.com/>

Dukes v. Wal-Mart class action http://www.walmartclass.com/public_home.html

International Association of Industrial Accident Boards & Commissions <http://www.iaiaabc.org/>

Property Casualty Insurers Association of America <http://www.pciaa.net/sitehome.nsf/main>

Central States Association <http://www.iaiaabc.org/cs/>

Southern Association of Workers' Compensation Administrators <http://www.sawca.com/>

State and Federal Links

U.S. Department of Labor State Workers' Comp. Laws <http://www.dol.gov/esa/regs/statutes/owcp/stwclaw/stwclaw.htm>

California Department of Industrial Relations <http://www.dir.ca.gov/>

Colorado Department of Labor and Employment <http://www.coworkforce.com/dwc/>

Kansas Department of Labor http://www.dol.ks.gov/wc/html/wc_ALL.html

Maine Workers' Compensation Board <http://www.maine.gov/wcb/>

Minnesota Department of Labor and Industry <http://www.doli.state.mn.us/workcomp.html>

New York State Workers' Compensation Board <http://www.wcb.state.ny.us/>

Washington Department of Labor and Industries <http://www.lni.wa.gov/>

Wisconsin Department of Workforce Development <http://www.dwd.state.wi.us/>