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A WORLD OF HURT

In Workplace Injury System, Ill Will on All Sides



Nathaniel Brooks for The New York Times

Fred Willette, a former metal grinder with lung disease, says he was fired for talk of filing a claim.

By STEVEN GREENHOUSE
Published: April 1, 2009

TONAWANDA, N.Y. — The sprawling DuPont plant along the Niagara River here can be a grim place, but less so on the days when the company hands out coupons to reward workers for a few weeks without injury.

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A World of Hurt

'Safety Bucks'

A New York Times examination of New York State's workers' compensation system uncovered a universe of delays, suspicion and questionable rulings.

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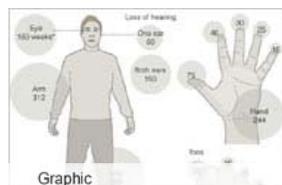


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James Rajotte for The New York Times
At FTT Manufacturing in Geneseo, Judy Wilkins, a manager, updates a scoreboard in the break room for a workplace game of safety bingo, one example of using monetary rewards to

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Nathaniel Brooks for The New York Times

The Curtis Screw Company of Buffalo spent \$4,900 per employee in 2007 for workers' compensation coverage for its 220 employees there, according to its president, Paul Hojnacki, a much higher per capita cost than at the company's North Carolina factory.

Called "safety bucks," the coupons look like real money and can be redeemed at Red Lobster, Home Depot and several other businesses in the area.

For some workers who risk their fingers and bones to make Corian, the stonelike countertop material that is the plant's major product, the coupons have become a modest blessing and benefit. But other workers regard them as a curse, as a way to mobilize peer pressure against workers who might consider reporting an injury.

"You know that if you report an injury, everybody says, 'You son of a bitch,'" said Dan Austin, who worked at the plant for 30 years. "I've heard people say, 'So-and-so reported an injury and it's going to cost us our safety bucks this month.' "

Companies across the state have recently introduced reward programs to curtail injuries, in part to keep their workers safe, in part to cut down on workers' compensation claims, which managers cite as a huge factor in the high cost of doing business in New York.

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"There are an awful lot of situations where people aren't truly injured on the job," said Gregory Harden, the president of Harden Furniture, a 380-employee company based in McConnellsville. "I tend to be a little cynical. Monday is always the day with the highest injury rate for us. Someone comes in on

Monday, and their back is really sore for whatever reason, and they end up missing a few weeks of work."

The state's multibillion-dollar workers' compensation system is plagued by many shortcomings: endless delays, suspect doctors, and a rudimentary form of justice that prevails as employees and employers seek to survive.

But perhaps the most powerful way to appreciate how the system has failed is to see what it has done to New York's workplaces. A century ago, when the state created its workers' compensation system, the goal was a no-fault insurance program that would foster workplace harmony by resolving disputes over injuries without litigation or recrimination.

Today, however, employers and employees are still at war over workplace injuries, a war marked by mistrust and fear. Each side is angry; each side has its own powerful evidence to justify that anger.

Workers say companies are going to extraordinary lengths to cut back on claims: contesting injuries, checking on workers at home, even firing those who file for benefits.

Employers say that the compensation system is so expensive, so riddled with fraudulent claims, that they need to take aggressive steps to curb their costs. A single injury can easily cost \$10,000, and sometimes several hundred thousand dollars when a badly maimed worker draws benefits for life.

Though no independent study has established that claimant fraud is rampant, many executives say the system is skewed against them by judges who favor claimants and by malingerers who collect benefits when they are well enough to work.

The state is putting reforms in place to reduce costs for companies and ease tensions in the workplace, but it remains unclear how much they will help. And the economic downturn has only added to the pressure to control costs.

So to cut back on 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.

"It keeps everybody's mind on safety because every day when they come in, that bingo board is right next to the time clock," said Ed Prunier, safety manager at Ball Metal Container in Saratoga Springs.

Some companies are also using a less fun-filled program, known as progressive discipline. At the DuPont plant here, workers face five progressive steps when they suffer repeated injuries deemed to be partly their own fault: verbal warning, written warning, probation, five-day suspension and dismissal.

"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."

Experts say it is difficult to estimate how often employers in New York retaliate against workers who file compensation claims because there is no tracking of such data. But 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](#).

Legal experts say New York makes it easy to fire workers who file claims. The law bars retaliation, but states that as long as an employer has a "valid reason," like a prolonged absence, the firing is legitimate.

Some of the workers most affected by efforts to curtail claims are immigrants, who make up an increasing part of the state's blue-collar work force. Many of them do not know about the compensation system, and when they get hurt, their employers often pressure them not to apply for benefits, worker advocates said.

"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."

Gerver Lopez, for example, was putting up aluminum siding in May 2007 when the scaffolding broke and he fell to the ground, hurting his spine.

Mr. Lopez, an immigrant from El Salvador, could not get up. He said his boss shouted: "Don't call an ambulance. I don't want no trouble. I have 30 houses to do, and I don't want to lose any of them."

An uncle drove him to Nassau University Medical Center, and doctors there told him that he would never walk again, he said. By the time his two-and-a-half-month stay ended, his medical bills topped \$45,000.

Now 22, he remains paralyzed, and is supported by his mother, a waitress.

"The boss said he was going to pay for everything and I shouldn't say anything," Mr. Lopez said. "He didn't give me a penny."

Hurt on the Job

Fred Willette followed his father into metal grinding, a world of dangerous dust and deafening noise.

At Kodak, where he worked for several years, a machine would collect the dust spun off by his efforts. But when he took a similar job at Addison Precision Manufacturing, a metal-parts factory in Rochester, he said his new bosses did not want to spend the \$3,000 for such a machine.

"They said, 'All we have to do is provide you with a dust mask,'" Mr. Willette said.

So for seven years, he said, he did what he was told, grinding tools that are used to make parts for rockets, snowmobiles and medical equipment.

Then the [shortness of breath](#) began. One day he passed out and was rushed to the emergency room, the first of several trips. The doctors initially thought it was [asthma](#). But on a return visit, a doctor asked him what he was grinding. "Tungsten carbide with cobalt," he replied.

It turned out he had hard-metal pulmonary disease, which, like [black lung disease](#), can be hobbling, even fatal.

Mr. Willette said that in March 2000 he told his bosses he was going to apply for workers' compensation to tide him over until he recovered. They fired him the next day, he said, a position the company disputes.

"They were saying: 'You're a liability. You're getting all these people involved. We don't need you,'" he said. He was 48 at the time.

Robert Grey, a claimant lawyer, said New York's law against retaliation "is close to useless, both as a deterrent and a remedy."

The courts have said employers can fire a claimant who misses too many days or if they need to hire someone to do the claimant's work. As a result, lawyers seldom pursue retaliation cases, said Michael T. Berns, a member of the state Workers' Compensation Board until last June. "The burden of proof is with the claimant," he said. "It's a very difficult burden."

Some states take a tougher stance. In Oregon, claimants retain the right to be reinstated to their job within three years of filing a claim, so long as they are still able to do the job.

Mr. Willette said that even after he was dismissed, the company challenged his claim. A private investigator for its insurance carrier began parking outside his house and trailing him to the doctor and the supermarket, he said.

"At first we thought it was the police," Mr. Willette said. "But the cops said, 'He's a private investigator watching you.'"

Rodney Champagne, one of the owners of Addison Precision, declined to discuss Mr. Willette's case. "I'm not really interested," he said.

But the company's insurer said in official filings that the [lung disease](#) stemmed largely from [smoking](#), not metallic dust. The company's chief executive, Robert Champagne, said during the compensation trial that he was concerned about his workers' safety and that Mr. Willette had not been fired for filing a claim. He was sent home, he said, because he was upset and shaky at work and had not brought in a requested note about the medication needed to control his stress-related [seizures](#).

After leaving Addison, Mr. Willette held a few lower-paying jobs for a few months, but his breathing did not improve, and he slipped into a depression for nearly a year. He felt too short of breath for his favorite pastime, fishing.

Now he spends his days watching television. Occasionally he visits his father, gathering strength to go out for an hour or two by using an oxygen tank at home.

He now receives benefits, \$278 a week. But because the company challenged his claim, those benefits did not start until 18 months after he was let go.

"You feel very low from what they put you through," he said. "They try to grind you down."

Fearing Fraud

As the sixth president in the Curtis Screw Company's 100-year history, Paul Hojnacki wants the company to survive another century in Buffalo, the city where it was founded.

But Mr. Hojnacki is so angry about the state's workers' compensation system that he sometimes talks of moving the factory, which makes precision auto parts. He denounces the delays in settling cases, complains about the "pro-worker judges" and about the way some employees, he said, are allowed to milk the system. Most of all, he indicts the costs.

Curtis Screw, he said, spent \$4,900 per employee in 2007 for workers' compensation coverage

for its 220 workers, more than 10 times what it cost at its factory in Cornelius, N.C.

"The cost of this monstrosity," he said of the system, "has to be taken into consideration because it's driving businesses out of New York State."

Mr. Hojnacki said the compensation bill represents 2.5 percent of the Buffalo plant's revenues, at a time when manufacturers often have profit margins of 3 percent. At the plant, where wages average \$15.50 an hour, compensation costs translate into \$2.50 for every hour that employees work, he said.

One of the reforms the state has pushed through in recent years reduced compensation premiums for many companies by 20 percent, but Curtis Screw self-insures, so it has yet to see any savings.

"New York State, prior to the reform, was one of the most expensive states in the country for workers' comp," said Kenneth Adams, the president of the [Business Council of New York State](#). "With these reductions in premiums, the cost of workers' comp for most employers has fallen into line with the average of other states. But if you're in manufacturing, it can still be a significant cost."

Mr. Harden, whose family-owned furniture company was founded in 1844, bristles at paying \$1,800 per employee for compensation insurance. He complains that a compensation judge in 2004 ordered his company to pay \$400 in weekly death benefits for life to the widow of a driver who died of [pneumonia](#) while making a delivery in Texas.

"It wasn't from anything on the job," Mr. Harden said of the death. While acknowledging that some compensation was in order, he said, "we feel the terms of our payments are excessive."

Mr. Hojnacki says he is similarly upset by the \$200,000 his company pays out annually to 15 former employees who have been classified as having permanent partial or permanent total disabilities. Nearly all of them, he said, were terminated for poor performance, then filed for compensation.

"We have 15 people that we terminated that we cut a check to every week, some that date as far back as 1993-94," he said. "It's absolutely ludicrous. Even with the workers' comp reforms, this legacy cost we literally have to pay until these people pass."

The Buffalo factory self-insures because Curtis Screw finds it cheaper to pay its compensation costs itself, rather than use an outside insurer. Mr. Hojnacki said his yearly compensation expenses include \$850,000 to cover medical expenses for current workers, replacement wages for those workers and state assessments to finance the comp system.

Mr. Hojnacki cited a machinist who worked at Curtis Screw for several years and then filed a claim for a back injury.

"We did surveillance on him," Mr. Hojnacki said. "We had a videotape where this individual was doing work on his house, lifting sheets of drywall and carrying them around and taking them from the outside to the inside by himself. We took it to the judge. The judge ruled, 'We find that the individual was having a good day.'"

The worker was classified as having a permanent partial disability, for which, Mr. Hojnacki said, the company pays him \$400 a week.

"The workers' comp judges are totally sympathetic with the workers," he continued. "One judge told me, 'It's workers' comp. It's not employers' comp.'"

One reason that Curtis Screw's costs are so high, Mr. Hojnacki acknowledged, is that his company has so many injuries, including a half-dozen workers who have had costly surgery for carpal tunnel problems. None of his workers in North Carolina have ever received compensation for such an injury, he said.

"We have 25 injuries each year, and of the 25 the vast majority are legitimate situations where people scrape a finger or slip or twist a knee," he said. "The vast majority of workers, they can't wait to be released from workers' comp and come back to work. For them, workers' comp is

exactly what it should be — it compensates them for the short period they're out. But then there's this small group of employees that play the system.”

Mr. Hojnacki said that with his company facing competition from China, high energy costs and a devastating downturn in the auto industry, it cannot afford to be saddled with illegitimate compensation claims.

“It's just devastating that you can have people who take advantage of the system,” he said. “They are taking money that we could be sharing with other workers.”

Safety Pays

At [FTT Manufacturing](#) in Geneseo, the safety bingo pot starts at \$25 and increases \$2 for every day without an injury. Each day a number is drawn, and workers keep tabs on their game cards.

If someone gets bingo after 20 days, the winner receives \$65, but the pot continues to grow until an injury is reported. The maximum pot is \$150.

“We didn't want to give them something cheesy — where people say ‘big deal,’ ” said Wade Smith, co-director of FTT's safety programs.

Within a year of introducing the game, he said, injuries fell by a third at the company, which makes high-precision parts for many industries.

The game was set up for FTT by an outside firm, [Safety Pays](#), which has sold bingo games to more than 3,000 companies and is converting the clamor over compensation costs into profits.

Safety Pays provides a format for the game, plus bingo boards, cards, balls and “Winner's Circle mini-posters.”

“The individual,” Safety Pays says in its advertising brochure, “who at one time alleged the occasional ‘[backache](#)’ in order to get a couple of extra days off will be hard-pressed to do so when his co-workers are anticipating a financial windfall by winning a jackpot.”

Mr. Smith said injured employees are never subjected to more than some good-natured “locker room pressure.”

But many 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.

Robert K. McLellan, former president of the American College of Occupational and Environmental Medicine, told the House Education and Labor Committee last year about a worker who told his doctors he had hurt himself at home when the injury had really happened on the job. The worker later admitted lying because he did not want his co-workers to lose a promised steak dinner.

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.”

Seth Marshall, founder of Safety Pays, says the games promote healthy peer pressure that increases everyone's focus on safety and discourages workers from reporting fraudulent injuries.

At the DuPont plant here, officials base performance bonuses in part on how many injuries occur at the plant. But they say they never want to deter the reporting of legitimate injuries.

“All safety incidents, regardless of size, are to be reported and investigated,” said Beth Turner, DuPont's director of global operations safety, health and environment.

Wendy Hughes, however, says she believes DuPont punished her when she crushed her thumb one day in 2002. The brakes of her forklift failed, she said, and when she tried to stop the forklift with her leg, her thumb got caught between it and a cabinet.

Doctors did a [bone graft](#) and inserted six pins in her thumb. She said DuPont seemed eager not to have her report a lost-time accident to OSHA, so her supervisors ordered her to return to the factory directly from the emergency room.

Ms. Hughes said she was not given any days off to recuperate. Instead, she was ordered to spend her days biding time in the factory's break room. When other workers complained about seeing her there, she said management ordered her to spend each day inside a four-by-six closet where protective work clothes were stored. DuPont declined to discuss her case, citing privacy concerns.

"All my co-workers started saying things like, 'We're not going to get any performance-based bonus,' " she recalled. "There go our safety bucks for the quarter.' "

A version of this article appeared in print on April 2, 2009, on page A1 of the New York edition.

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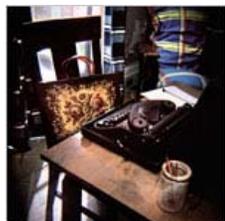
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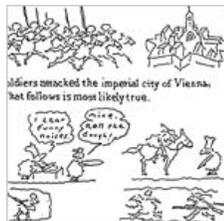


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