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For many injured workers, benefits are often short lived, while the pain lasts forever

BY JESSICA BARTLETT | jbartlett@boston.com

J

uan Daniel Alvarado was in so much pain he couldn’t sleep. In November 2013, he had herniated two discs and pinched his sciatic nerve while lifting 75-pound bins of recycled-bottle material at the liquor store where he had worked. Though he didn’t want to get his employer in trouble, he asked the company to fill out the worker’s compensation paperwork. What followed is a tale that is too common and all too unfortunate. Alvarado found an attorney through a friend that settled his case with the employer’s insurance for only $5,000 – a paltry tradeoff for the fact that Alvarado hadn’t been able to work for a year. Desperate for money, Alvarado sought advice from his doctor at Boston Medical Center. The physician referred Alvarado to the Massachusetts Coalition for Occupational Safety & Health, and an attorney there reopened his case.

Alvarado eventually received an additional $40,000 in lost wages and medical treatments for two years, which would pay for his care in addition to his personal insurance.

Yet Alvarado’s doctors have told him he won’t be able to go back to lifting heavy materials. He’s doing deliveries by car, and his wife works part time. But it isn’t enough.

“My life has changed a lot because I can’t move around the same way I used to,” said the 67-year-old Alvarado, speaking in Spanish, through a translator. “If I were to get any kind of future work, it will have to not involve long periods of standing. That’s what has changed my life. I’m a bit worried as well. I know I have to work because I have three young kids I’m trying to support. I’ve had to get loans and go to a pawn shop ... whatever I need to do to survive.”

There is no shortage of complaints when it comes to workers' compensation in Massachusetts, ranging from what many say is a convoluted and lengthy process to the relatively small amounts injured workers can receive relative to peers in other states.

What is clear is that workers who are injured on the job are often left worse off – both financially and physically – than they were before the injury, especially when they are injured in Massachusetts.

“The system isn’t providing what’s needed,” said Al Vega, deputy director of the Massachusetts Coalition for Occupational Safety & Health, which works with injured workers largely from the immigrant community. Problems abound from the beginning. Employers may or may not be cooperative about filling out workers’ compensation paperwork. Employees can only receive 60 percent of their weekly wages. It can take weeks or months for employees to see any kind of compensation. In the meantime, injured employees use their personal health insurance to pay for their care, and go without a paycheck, said Marcy Goldstein-Gelb, with MassCOSH.

“They may or may not be referred to the workers’ comp system,” Goldstein-Gelb said. “They might not get access to the whole benefits they need and might not get wage replacement.”

The duration of time an injured worker can collect wage benefits is less in Massachusetts than in other states – only three years for a worker who is totally unable to work, and only five years for a worker who is able to work but limited in what they can do.

In Massachusetts, if a worker can prove his injury prevents him or her from working any job at all – given that employee’s age, experience, and skills – workers can receive a weekly benefit for life, Alan Pierce, a Salem labor attorney, said. Those workers may see more compensation by being in Massachusetts. “But most everybody gets back to work,” Pierce said. “Very few people are rendered out of the workforce because of an injury ... it’s probably 1-to-2 percent end up as totally disabled.”

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Testimonials | The Boston Business Journal met with workers who were injured while on the job. Read their stories: 18 & 19
TESTIMONIALS
The Boston Business Journal met with workers who were severely injured while on the job. Here are their stories.

NAME: THIAGO*
Occupation: Carpenter
Age: 32
Injury: Fell off a beam 20 feet in the air on a construction project, breaking his breastbone, several ribs and injuring his shoulder this past spring.

Workers’ comp story: Thiago started receiving workers’ compensation benefits 21 days after his injury. Though he is receiving wage compensation and medical compensation, the wage compensation isn’t enough to get by, and the approval process for his medical treatments makes it difficult to receive therapy. “There’s no way it’s enough,” said Thiago, who speaks Portuguese, through a translator.

NAME: MIGUEL*
Occupation: Roofer
Age: 40
Injury: Stepped on loose shingles and fell off a roof in fall 2014, hitting his head on a machine on the ground. He damaged his shoulder, wrist and lower back. The head injury caused ringing in his ears and hearing loss.

Workers’ comp story: Though Miguel said he worked for this company for 11 years, the contractor initially didn’t want to call an ambulance when he was injured. It took 10 months to receive wage compensation and medical benefits because of disputes over which insurer would pay his claim. “I worked for this company for years on many different projects,” said Miguel, who speaks Spanish, through a translator. “I shouldn’t have had to go through what I went through because of the hard work I gave them.”

NAME: JOSE*
Occupation: Roofer
Age: 25
Injury: Fell off a roof while working, severely injuring his ankle in fall 2015. He has three metal plates and 20 screws in his ankle.

Workers’ comp story: Rather than call an ambulance when Jose was injured, his employer had a co-worker drive him to the hospital and admit him under a false name, saying he fell out of a tree. His employer refuses to file a claim, and denies that Jose worked for him. Because Jose was paid in cash for his services and wasn’t picked up by an ambulance, he is having trouble proving he was injured while at work and isn’t currently receiving any workers’ compensation. His personal insurance is paying for physical therapy. “My friends have lent me money,” said Jose, who speaks Spanish, through a translator. “I’m still not able to work. My hope is somehow I will get the help I need.”

* Since cases are ongoing, names have been changed.
**Business of Health**

**Education in Safety**

Construction firms take a proactive approach to worker education

**by Catherine Carlock**

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Even when following protocol, construction work is still among the most dangerous of professions. Indeed, just last summer, a construction subcontractor died and another was injured in Somerville when a temporary hoist cab pulled away from the site of the Partners HealthCare administrative office project. Some 80 percent of construction workplace accidents are caused by human factors such as fatigue or inattention, while the balance are the result of site conditions, said Al Gogolin, senior vice president with Skanska USA in Boston. Recent Skanska projects include Watermark Seaport, 101 Seaport Blvd., and the under-construction 121 Seaport Blvd.

"We spend 80 percent of our time and our effort trying to put new systems in place, new conditions, new rules, new processes," Gogolin said. "We only spend 20 percent of the remaining time actually dealing with the human factor." Skanska USA calls that human factor "care for life," which means creating a culture on a construction site where workers feel responsible for their personal safety and the safety of others, Gogolin said.

Gogolin said each Skanska project site begins the day with the whole crew coming together for a "stretch and flex" — akin to morning calisthenics, where workers can prepare physically for the day. But that also helps build a camaraderie, he said.

"You start to develop a personal relationship with someone, and in six weeks you see him doing something unsafe, you can say to him, 'Hey listen, John, I know your wife is waiting for you to come home, and if she saw you doing that, she wouldn't be happy,'" Gogolin said.

Beyond the daily stretch and flex, the next step is a daily hazard analysis to go through how to execute the work day.

"Construction's probably the most dangerous profession in the U.S. Anything we can do to stop complacency is important," Gogolin said.

Gogolin said that Occupational Safety & Health Administration focuses on four main safety and health topics for construction sites: falls, electrocution, "struck by" and "caught between" — in other words, when workers are hit by something on a site or when workers have hands or limbs trapped between pieces of equipment.

OSHA regulations are "almost continuously" updated, Gogolin said. The agency also provides safety-method training, which for some can take upward of 30 hours, said Peter Stankiewicz, managing director of construction services for JLL Construction's New England region.

Stankiewicz said that JLL’s construction sites have a zero-tolerance policy when it comes to workers wearing personal protective equipment that helps protect limbs. "If somebody is not wearing a hard hat, or they're not wearing proper eye protection, they're not allowed to work on the site," he said.

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At a loss

Injured workers in Massachusetts are eligible for a fraction of the maximum payouts allowed in other states — and the business community has few incentives to change that.

BY GREG RYAN
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If you’re a worker in Massachusetts who has his or her arm severed off while on the job, the average maximum payout you can receive in direct disability pay for that injury is $52,245. But if you worked that same job, and suffered that same injury, across the border in New Hampshire, you’d receive more than five times as much, according to a 2013 investigation by the nonprofit journalism outfit ProPublica and National Public Radio. Across the country in Nevada, you’d get 16 times as much.

In fact, there’s only one state in the country — Alabama — where you’d get a smaller payout for losing your arm than you would here in the Bay State.

The state of workers’ compensation in Massachusetts isn’t quite as dire as that figure suggests, since injured employees receive a regular payment in addition to the so-called “loss of function” award. Still, despite its progressive reputation, healthy local economy and massive building boom, the Bay State ranks no better than the middle of the pack nationwide in what businesses pay out to injured workers under state law, according to the attorneys who represent employees injured on the job.

“It doesn’t seem to be a very balanced scheme … not only in Massachusetts, but nationwide,” said Gerard Carney, a Boston lawyer who represents injured workers.

Benefits were significantly more favorable for Massachusetts workers before former Gov. William Weld pushed through major reforms in the early 1990s. That effort was itself a response to changes in benefits implemented during the Michael Dukakis administration in the 1980s. The Dukakis-era reforms helped injured workers receive benefits more quickly and improved the rehabilitation services on offer, but led to a higher volume of cases than anticipated, a 1989 KPMG report found.

Workers’ compensation insurance costs for employers more than doubled from 1988 to 1991, according to the Associated Industries of Massachusetts.

With the state mired in a recession, Weld pushed through legislation in 1991 that resulted in new limits on benefits, including cutting the length of time that injured workers can receive some benefits from five to three years. At the same time, the average rates for workers’ comp insurance plummeted. In the years since, employers have held up Weld’s reform as a smashing success, saying it has kept businesses and jobs in state.

Workers’ comp lawyers, unsurprisingly, feel differently.

“They changed the amount of benefits that injured workers receive. I don’t usually like to use the word reform. It made something better for business, but it made something worse for injured workers.”

— ALAN PIERCE,
Salem-based attorney

Low-paid workers are hurt most by the way the Massachusetts system is currently set up. While employers in many other states receive larger loss-of-function awards for severe injuries, the compensation of Massachusetts workers is more dependent on their wages. If workers are incapacitated for six or more days, they can receive 60 percent of their average weekly wage for up to three years. In other states, workers receive two-thirds of previous wages. Considering that many workers who get hurt were living paycheck-to-paycheck before their injury, that extra 6- to 7 percent in lost wages can make a big difference, Pierce said.

Since the early 1990s, there have been few, if any, major changes to workers’ compensation laws in Massachusetts. For example, recent efforts on Beacon Hill to increase disability pay have gone nowhere. More limited legislation to expand compensation for scarring, which is currently only covered if it is to the face, neck or hands, passed the Senate but did not advance from the House.

“The goal is to always try to achieve a balanced system of fair, affordable premiums in exchange for satisfactory benefits delivered in a timely and efficient manner,” Pierce said. “We right now are out of balance, but not grossly out of balance.”