

A Small Research Project Funded by the
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Legal Services Available to Injured Workers in California

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I. Introduction

Workers with occupational injuries in California often face significant problems in navigating the workers' compensation system and other legal systems designed to provide medical care and financial support and protect injured workers from discrimination in employment. The laws and procedures are complicated, and the administrative agencies are not well coordinated with each other. Many injured workers therefore need individualized assistance and sometimes formal legal representation.

Many workers, however, find it difficult or impossible to get this kind of help. The state Division of Workers' Compensation does not advise workers in complicated legal problems or advocate on their behalf. Many workers cannot find attorneys to advise them with their workers' compensation claims because applicants' attorneys are generally only paid based on the level of a worker's permanent disability, which discourages handling of claims that appear to involve little or no permanent disability.¹ Most legal aid organizations that assist in employment matters, such as disputes over unpaid wages, do not provide in-depth services in workers' compensation.

This project was designed to describe and document some of the gaps in legal services in different areas of law affecting injured workers – through interviews with persons from labor organizations, legal aid organizations, and law school clinical programs – and to explore policy solutions for fulfilling these legal-services needs. The "legal services" studied in this project encompass the following activities:

- Representing injured workers and advocating on their behalf to other parties or in legal proceedings;
- Advising and guiding individual workers about steps they can take on their own to exercise their legal rights;
- Answering questions and helping individual workers understand their cases;
- Training groups of workers about how to navigate the different legal systems.

A proposal for a follow-up project – to explore strategies with applicants' attorneys, insurers, state agency personnel, and other stakeholders in the workers' compensation system to close these gaps – was recently approved by the California Commission on Health and Safety and Workers' Compensation.

¹"Navigating the California Workers' Compensation System: The Injured Worker's Experience," prepared by UC Berkeley's Labor Occupational Health Program for the California Commission on Health and Safety and Workers' Compensation, 1996.

II. Research Activities

A. Identification and Recruitment of Interviewees

1. Labor Organizations

To cover a wide range of industries in different parts of California, efforts to contact labor organizations focused on central labor councils (including one building trades council), rather than individual labor unions. Central labor councils and building trades councils organize and coordinate political activities of the labor movement at a county or regional level, and some central labor councils also have community service programs that assist individual workers, including both workers who belong to unions and nonunion workers.

Some of the interviewees were identified through referrals from two UC Berkeley programs (the Institute of Industrial Relations and the Labor Occupational Health Program) or through referrals from the persons initially contacted. Others were identified through website listings of the California Labor Federation, AFL-CIO. One representative from a local union was identified and contacted as a result of a recommendation from one of the central labor councils.

Initial contact was made by electronic mail or telephone. Out of 16 representatives from labor who were contacted, 11 responded and agreed to be interviewed. Geographically, the labor organizations involved in the interviews covered a wide range of rural and urban counties in northern and southern California: Alameda, Butte, Contra Costa, Del Norte, Fresno, Glenn, Humboldt, Inyo, Kern, Kings, Los Angeles, Madera, Mono, Sacramento, San Francisco, San Joaquin, San Mateo, Stanislaus, and Tulare Counties. The interviewees from central labor councils held positions of leadership in the labor council or were in charge of community service, legal service, or research programs of the labor council. The interviewee from a local union was a senior field representative.

2. Legal Aid Organizations

Legal aid organizations were initially identified through a directory of programs that are funded by the State Bar of California to give free or low-fee legal services to persons who meet particular standards of poverty. Of these organizations, the ones that were listed as providing services in employment law were singled out. Individuals were then identified through those organizations' websites or through a prior working relationship with the investigator (director of this project).

Initial contact was made by electronic mail. Out of ten legal aid representatives who were contacted, eight responded and agreed to be interviewed. The legal aid organizations involved in the

interviews serve workers in a wide range of rural and urban counties in northern and southern California. Two of the organizations serve the entire state. The others serve in Los Angeles, Mariposa, Merced, Riverside, San Bernardino, San Francisco, San Mateo, Santa Clara, and Tuolumne Counties. All of these interviewees were attorneys. They held positions that ranged from directorship of the legal aid organization or of a program within the legal aid organization, to direct responsibility for providing legal services to individual workers.

3. University of California Law School Clinics

Clinical programs, faculty, and staff were identified through website listings of the law schools at UC Berkeley, UCLA, UC Hastings (San Francisco), and UC Davis. In addition, staff of legal aid organizations identified possible interviewees at some of law clinics.

Initial contact was made by electronic mail. Faculty at each of the four law schools responded to the initial contacts. However, only one of the law schools – Boalt Hall at UC Berkeley – was ultimately represented in the interviews. Clinical faculty at the three other law schools would not participate formally in interviews, in part because they felt that their activities and programs were outside the scope of this project, in that they did not offer services geared for occupationally injured workers.² The interviewee from Boalt Hall was the program director of the East Bay Community Law Center.

B. Design of the Interview Questions

The interview questions were designed based on the objectives of this project. They asked about the areas of law that were covered by that organization's services, the kinds of cases in which the organization represents injured workers, where cases get referred, opinions regarding unmet needs of injured workers for legal services, and preliminary ideas regarding possible ways to improve legal services for injured workers. The questions were open-ended, to allow the interviewees to fully express their insights and ideas.

C. Informed Consent

Each interviewee received and reviewed a consent form that had been approved by UC Berkeley's Committee for the Protection of Human Subjects. Consent was given by return of a signed form or by electronic mail.

²The three other law schools have clinical programs in one or more of the following areas: civil rights, education law, housing law, immigration law, prison law, Social Security disability benefits, unemployment insurance benefits, and wage claims.

D. Conduct of the Interviews

The interviews were conducted in Fall 2001. Prior to being interviewed, each person received a copy of the interview questions by electronic mail or facsimile transmission. Two of the interviews were conducted by electronic mail, as preferred by those persons. All of the other interviews were conducted by telephone. The telephone interviews lasted between 15 minutes and one hour.

The project director (Juliann Sum) conducted the interviews and took notes during the discussion. The main questions were covered, and follow-up questions were asked based on the interviewees' initial responses.

E. Analysis

The project director reviewed the handwritten notes from the telephone interviews and electronic mail responses, and prepared a summary of each interview to allow comparison of different responses according to the questions asked and issues discussed in the interviews. After an initial review and grouping of the aggregate responses, the original notes were reviewed again to ensure that all major issues were included in the final report.

III. Findings

The interviews showed that the mix of legal services available to injured workers seems to vary widely and unpredictably throughout the state, and includes gaps in services for many kinds of cases. Therefore, injured workers are not able to follow a clear, consistent pathway to obtaining legal services.

A. Services Provided by the Organizations

The interviewees were asked to describe the types of services, if any, provided by their organizations in the following areas of law that potentially affect an injured worker:

- **Workers' Compensation.** Workers' compensation benefits include medical care, financial payments, and vocational rehabilitation services. Employers are required by state law to provide these benefits to occupationally injured employees.
- **Anti-discrimination Laws.** State workers' compensation law prohibits discrimination against occupationally injured employees. Federal and state disability laws prohibit discrimination against disabled employees.

- **Employment Benefits.** Federal and state laws govern family and medical leave. Other federal and state laws govern other types of benefits (e.g., group health plans, sick leave, salary continuation, and long term disability insurance).
- **Public Benefits.** These include state disability insurance (SDI) benefits, unemployment insurance (UI) benefits, and Social Security disability benefits, which are provided directly by federal and state governments.

1. Services Provided by the Labor Organizations

As described below, the 11 labor organizations represented in the interviews offer varying combinations of the following types of direct services in one or more areas of law: advocacy on behalf of injured workers, advice and guidance on steps to take in individual cases, training on how to navigate different legal systems, and referrals to other agencies or providers.

Advocacy and Representation. The interviewee from a local union reported that the union represents injured members in the grievance procedure if the issue in dispute is covered by the labor-management contract. This includes disputes over sick leave, salary continuation, and health insurance. In contrast, interviewees from most of the central labor councils reported that their labor councils do not represent workers in legal proceedings. One notable exception: the Employee Rights Center of San Diego – a collaborative project of the San Diego-Imperial Counties Labor Council, local attorney organizations, and two local law schools – represents workers in certain types of actions involving discrimination, family and medical leave, and public benefits. However, the Center does not represent workers in workers' compensation proceedings.

Advice and Guidance. Several of the central labor councils offer personalized advice and guidance to individual workers in some or all of the areas of law listed above. Some of these labor councils do this through their community service programs. Interviewees described how they explain to injured workers the steps in a case, help the workers frame the issues, and guide them in preparing their own cases if there is no other help available. In some cases, interviewees said that they also work directly with the worker's attorney or physician to ensure that those providers' services are available and appropriate.

Training Workshops. Two of the central labor councils offer training workshops for workers. The Employee Rights Center of San Diego (described above) offers six-hour workshops in labor and employment law, including all of the areas of law listed above. They

have trained 400 low-income job trainees in the past two years.³ The Los Angeles County Federation of Labor offers workshops for union members who have lost jobs; the workshops cover employment benefits and public benefits.

Referrals Only or No Services. Several interviewees reported that their central labor councils do not offer any legal services to injured workers except to refer them to other agencies or providers. This is partly because those labor councils are mostly involved in election campaigning, political advocacy work, and organizing. In addition, interviewees from two other central labor councils reported that injured workers who belong to unions usually do not call the labor council because it appears that the unions provide sufficient help, sometimes with information and support from the labor council.

2. Services Provided by the Legal Aid Organizations

Like the labor organizations described above, the eight legal aid organizations represented in the interviews offer varying combinations of the following types of direct services in one or more areas of law: advocacy on behalf of injured workers, advice and guidance on steps to take in individual cases, training on how to navigate different legal systems, and referrals to other agencies or providers.

Advocacy and Representation. Interviewees from all eight of the legal aid organizations reported that they represent workers in some, but not all, of the areas of law listed above. Claims for unemployment insurance benefits and claims for unpaid wages were the areas of law in which the greatest numbers of interviewees reported offering representation services. A few also offer some representation services in selected areas of law involving employment discrimination, employment benefits, and other public benefits, depending on the organization's available resources.⁴

Workers' Compensation. All but one of the legal aid interviewees reported that their organizations do not represent injured workers in the workers' compensation system. Several emphasized that in contrast to other areas of employment law, the workers' compensation system is too "complex," "specialized," and "overwhelming" for their organizations to handle, and that they refer workers elsewhere for help in workers' compensation (as described below). One interviewee said that a requirement of their funding is that they refer clients to the private bar if a case can generate attorney's fees. The one legal aid program that does represent injured workers

³The Employee Rights Center of San Diego also conducts outreach and education with institutions in the local community that serve low-income workers.

⁴Other areas were also mentioned, including, for example, public housing for disabled tenants and legal actions alleging wrongful termination.

in the workers' compensation system is the workers' compensation program of the East San Jose Community Law Center.

Advice, Guidance, Training, and Information. Some of the interviewees said that in areas of law where their organizations cannot represent injured workers, they do provide information, training, and/or individualized guidance to help workers proceed on their own.

3. Services Provided by the Law School Clinic

Selected Employment Issues and Referrals. The East Bay Community Law Center, which is sponsored by UC Berkeley's Boalt Hall, was the only UC law school program represented in the interviews. According to its website, the Center serves the homeless and near-homeless in areas of law involving housing, employment and income support, HIV/AIDS services, and community economic development. The interviewee from the Center reported that they also cover employment issues, where applicable, in their handling of cases for persons with HIV or AIDS. Their services, however, are not specifically geared for occupationally injured workers, except for referral services.

B. Referrals to Other Legal Services

In areas where organizations do not offer complete legal services, interviewees reported that injured workers are referred to other organizations or providers of services. These included the following: local attorney referral services (usually a county bar association); individual attorneys or law firms; and governmental agencies that either help workers apply for benefits, investigate and enforce possible violations of applicable laws, or adjudicate and resolve disputes.

Most of the interviewees from central labor councils said that they refer union members to their local unions. Several, however, commented that unions do not handle areas of law outside the labor-management contract, such as state unemployment insurance benefits, and that some unions are generally inactive in helping their injured members.

Some of the interviewees from central labor councils said that they recommend attorneys who are supportive of labor and who have ongoing relationships with unions. Central labor councils also refer workers to legal aid organizations and nonprofit advocacy groups.⁵ Some of the interviewees said that they make follow-up calls to determine whether these other services will be provided to the worker.

⁵Labor interviewees named two legal aid organizations that provide services in employment law throughout the state: (1) the Legal Aid Society - Employment Law Center; and (2) California Rural Legal Assistance, Inc.

In particular areas of law, workers are referred to the organizations or providers described below.

1. *Workers' Compensation*

Injured workers are referred to the following: specific applicants' attorneys or law firms; the Information & Assistance (I&A) offices of the state Division of Workers' Compensation; and the state Workers' Compensation Appeals Board. Several of the labor and legal aid interviewees said that they refer workers to attorneys but not to I&A offices, or that they refer to I&A only as a "back-up." (Reasons given were that injured workers need an advocate and I&A officers do not provide advocacy services, and that the local I&A officer is too busy with settlements to respond to callers.) On the other hand, many of the interviewees believed that workers with low-value cases face difficulties trying to find attorneys to represent them.

2. *Anti-Discrimination Laws*

Injured workers are referred to the following: attorneys and law firms that handle discrimination cases; the U.S. Equal Employment Opportunity Commission (which investigates claims under the Americans With Disabilities Act); the California Department of Fair Employment and Housing (which investigates claims under the Fair Employment and Housing Act); and the California Labor Commissioner (which investigates certain kinds of discrimination complaints).

3. *Employment Benefits and Wages*

Injured workers are referred to the following: attorneys and law firms that handle employee benefits (including those governed by the federal Employee Retirement Income Security Act, or ERISA); the U.S. Department of Labor (which assists with claims under the Family and Medical Leave Act); the California Department of Fair Employment and Housing (which investigates claims under the California Family Rights Act); and the California Labor Commissioner (which investigates and adjudicates wage disputes).

4. *Public Benefits*

Injured workers are referred to the following: the California Employment Development Department (to apply for unemployment insurance benefits or state disability insurance benefits); the California Department of Social Services (to apply for welfare); the U.S. Social Security Administration (to apply for Social Security disability benefits); and particular attorneys who work in some of these areas of law.

C. Interviewees' Observations About Gaps in Legal Services

Most of the interviewees identified legal services for injured workers that are needed but not readily available. Interviewees from the labor organizations discussed insufficient information about rights and procedures and difficulties faced by workers in knowing how to access the workers' compensation system, particularly for workers who do not speak English. Some emphasized that injured workers cannot get individualized help and that many injured workers "have given up." (In contrast, two of the interviewees – from central labor councils in rural counties – said that injured workers in their service areas usually obtain adequate legal services, either from their local unions or from attorneys recommended by the central labor council.)

Interviewees from the legal aid organizations and the law school clinic said that legal services are often not available to injured workers. Several identified the following areas of law and types of cases where this is a significant problem: low-value cases in workers' compensation, discrimination claims in workers' compensation (under Labor Code section 132a), workers' compensation cases involving illegally uninsured employers and the state Uninsured Employers Fund, claims for state disability insurance benefits, appeals involving unemployment insurance claims, and enforcement of the federal Family and Medical Leave Act.

D. Interviewees' Ideas for Improving Legal Services

The interviewees had many ideas for improving the legal services that are available to injured workers, described below.⁶

⁶Interviewees also discussed possible ways to make the systems fairer and improve injured workers' overall experiences. These included the following:

- Eliminating the right of employers and their workers' compensation insurers to select an injured worker's physician, because employer-selected physicians are motivated to make medical determinations that favor the employer.
- Improving rehabilitation, training, placement, and follow-up services to help injured workers find work that is relevant, productive, efficient, and appropriate, and that pays as much as the worker earned previously. In multi-union settings, this might require agreement between unions over workers being placed in different job classifications.
- Introducing legislation and conducting impact litigation (publicized lawsuits that enforce existing laws) to encourage compliance with laws.

1. Information About Rights, Options, and Available Services

Interviewees recommended education for workers that triggers basic awareness of their rights to a safe and healthy workplace and workers' compensation benefits in case of injury, and includes information about what is realistic in the current legal systems. For example, workers should know that legal processes do not necessarily lead to totally fair and just results or personal vindication of their grievances. In addition, training needs to help overcome the stigma associated with applying for benefits. Interviewees also recommended that training programs be systematic, that information be included about the full range of available resources, and that materials be written in plain, simple language.

One labor interviewee commented that because the many legal systems affecting injured workers are compartmentalized and fragmented, workers cannot differentiate all the pieces. Furthermore, the landscape of available services constantly changes. Workers therefore need "a clear roadmap" into all areas of law, including practical information about how the systems work and situations where they do not work. It was felt that ideally, there would one place for injured workers to go to obtain "comprehensive, non-stop services" to learn about their rights and options. Similarly, another labor interviewee recommended that a common listing of legal service providers for injured workers and "how to" instructions be posted in the Internet.

Interviewees from both labor and legal aid organizations emphasized that written information about rights and procedures and in-person services should be available in multiple languages to assist non-English-speaking injured workers. Languages included Cantonese, Vietnamese, Mandarin, and Russian, as well as Spanish. Notices from employers, for example, should be distributed in different languages, and multilingual services should be available at the Workers' Compensation Appeals Board.

In addition to education of workers, interviewees recommended that the public be educated about legal rights and that unions and legal aid attorneys be trained to assist injured workers in all areas of law. In the area of employment leave, one legal aid interviewee recommended education about the federal Family and Medical Leave Act.

In the workers' compensation system, one legal aid interviewee recommended that forms and claim-specific benefit notices be revised so that they are understandable and not antagonistic.

2. Governmental Procedures and Resources

Several labor interviewees spoke about the slowness of governmental procedures and delivery of governmental services. This included, for example, long delays in workers' compensation claims and in services of the state Employment Development Department and the state Department of Rehabilitation. It was recommended that the state Division of Workers'

Compensation and the other agencies be given more funding so that more personnel could be hired to handle cases and deliver services.

In the workers' compensation system, interviewees recommended strengthening enforcement of the statute prohibiting retaliation against injured workers (Labor Code section 132a) and enforcement of laws requiring employers to give employees basic information about workers' compensation (e.g., Labor Code section 3550). One legal aid interviewee pointed out that the state Department of Fair Employment and Housing and the state Labor Commissioner both actively investigate and resolve cases involving discrimination or retaliation in employment, but that in contrast, the state Division of Workers' Compensation takes a more passive role with 132a claims.

Within the Division of Workers' Compensation, one legal aid interviewee recommended that the Uninsured Employers Fund actively assist employees of legally uninsured employers (e.g., by providing identifying information about those employers in support of workers' claims), that public workshops by local Information & Assistance officers be conducted more frequently (weekly instead of monthly), that reference materials, pamphlets, and telephones be readily available at district offices of the Division, and that clear directions be given on how to find the district offices.

3. *Private Attorneys' Services*

Several legal aid interviewees recommended that fees for applicants' attorneys in the workers' compensation system be increased, because currently their fees are mostly based on a percentage of a worker's permanent disability benefits. Increased fees would allow applicants' attorneys to be paid to handle problems involving medical care, medical bills, payments for temporary disability, and illegally uninsured employers. Interviewees suggested that the increased fees could be paid by employers, insurers, medical providers (when the attorney is also representing the medical provider in a claim for payment of medical fees), or the state Employment Development Department (which pays state disability insurance benefits to injured workers who do not receive workers' compensation benefits).

One legal aid interviewee said that more attorneys are needed who can handle state disability insurance cases and appeals involving unemployment insurance benefits.

4. *Labor and Community-Based Legal Services*

Several interviewees recommended that funding for existing legal services be increased to allow more services for injured workers.

Alternative methods for delivering legal services were also suggested. Some interviewees suggested funding of public interest law programs throughout California to enable law students, undergraduate students, and volunteers from the local community to help deliver legal advice to workers who cannot find attorneys to represent them. These advice services would be given under the supervision of volunteer attorneys.

One labor interviewee suggested that labor unions and central labor councils work with attorney organizations to develop a program of outreach and education about legal systems. Another labor interviewee, however, expressed concern as to how to tap into already stretched resources of unions.

IV. Discussion

The main purpose of this project was to gather information that could be used to help design and implement effective and realistic strategies for improving legal services for injured workers. A companion project - to discuss strategies and explore specific methods with stakeholders in the California workers' compensation system - is already underway. In addition, a labor-based project – to train union activists throughout California to assist, support, and mobilize injured members – was recently approved by the UC Institute for Labor and Employment and UC Berkeley's Center for Labor Research and Education.

The results of this project will be useful in the two new projects as follows:

- The problems uncovered and ideas suggested by the interviewees will be used as starting points to explore educational, governmental, labor, and community-based strategies with the workers' compensation stakeholders.
- The multiple, intertwined legal systems affecting injured workers, as identified and described by the interviewees, will be further studied and analyzed in the preparation of training materials for union activists. In addition, programs of some of the central labor councils represented in the interviews might be used as models for the new labor-based project.