

Comparative Review of Workers' Compensation Systems in Select Jurisdictions

JURISDICTION: GERMANY

ENVIRONMENT

Population Size 81.844 million (1996) - the largest population in Europe after Russia

Labour Force 38.386 million (1996) (economically active, includes self employed of 3,651 million)

Demographic and Economic Indicators Germany is a densely populated, highly industrialized nation with a GDP of \$3,444.8 DM billion (1995).

Though the mainstay of the German economy is its manufacturing industries (mechanical and electrical engineering, chemical and electronics industry, automobile industry), manufacturing has declined in importance over the last quarter century from 51.7% of the economy in 1970 to 34.6% in 1995.

After reunification in 1990, the country slipped into a severe recession, in the western states as a result of economic redistribution and in the eastern states due to the transition from a socialist central planning to a social market economy. Recession necessitated significant cut-backs in funding for social programs. Today, recovery is underway, due in large part to increasing economic integration of eastern and western parts of the new federal republic.

The unemployment rate for 1996 was 11.5% (30,814 million employees and 3,935 million unemployed). The unemployment rate at January 1997 was 13.5%.

**GOVERNANCE &
ADMINISTRATION**

Nature of System	A national, compulsory, workers' compensation program ¹ .
Principles and Mandate	The mandate of the German system is early intervention, prevention and rehabilitation. The guiding principle of the system is vocational retraining and rehabilitation before pensions ("Rehabilitation vor Rente") ² . The German system is based on the philosophy that "work is vital to life" and that injured workers want to return to productive work. The system is based on a model of cooperation between employers and employees working together to promote a safe working environment and effective vocational rehabilitation where workers are injured ³ .
Access to Litigation	The German workers' compensation system is an exclusive remedy system. The workers' compensation program is the only remedy that an employee has against an employer for job related injuries and diseases and there is no access to tort remedy for work related injuries and diseases. Decisions of the accident insurance carriers can be checked by

¹ Germany was the first nation to have a workers' compensation program introduced in 1884. In response to a developing socialist movement in the German Empire, Otto Von Bismarck, Chancellor of the German Empire introduced a program to provide workers with assistance in the event of an accidental injury, sickness or old age. The Sickness Bill became law in 1883 and the Accident Bill in 1884. The Sickness Insurance law paid indemnity to workers with job related injuries for up to 13 weeks (for the first 4 weeks at 50% of prior wages, from the fifth week the benefit was 66.7% with 50% paid by the sickness fund and 16.7% by the accident fund).. After this 13 week period the accident funds, financed entirely by employers, continued the benefits at 67% for workers who were totally disabled. The benefit rate for permanently disabled workers that needed constant care was 100%; for partial disabilities the 66.7% rate was scaled for the percentage of loss in earnings capacity. Subsequently, in establishing their own workers' compensation systems, many nations adopted at least certain features of the German model.

² There appears to be a very strong social bond between the employer and the employee in a shared commitment to returning injured workers to the workplace. This is enhanced by the co-determination model. Employee representatives have access to decision making for pension entitlement and disputes occur mainly in the complex areas of cancer, respiratory, and asbestos related cases , page 15, Williams and Zimmerman, *Report of the 1994 German Study Tour* , December 1994.

³ Legislation regarding the occupational accident insurance system, including OHS, was reviewed and modernized in 1996/97. Last update December 1, 1997.

specialized courts for social affairs ("Sozialgerichte") with the possibility to appeal to the High Courts for Social Affairs of the Federal States and the Federal Supreme Court for Social Affairs.

Scope of System

Who is Covered?

All private wage earners and apprentices, including workers in the agriculture and horticultural sectors and marine industries, family helpers and students including children in kindergarten are covered. Certain self employed persons are covered either under the federal statute or the statutes of the separate institutes (see below), but (with very few exceptions) *all* self employed persons can voluntarily become insured members of the appropriate institute. The workers' compensation program also covers workers commuting to work.

What is Covered?

Workers are covered if they are injured by an accident or incur a disease as a result of their employment. They are specifically covered while commuting to and from work and while storing, moving, or repairing equipment necessary for work.

Occupational disease coverage is limited to 67 diseases, though there is a provision that allows payment of benefits for unlisted diseases⁴.

Self Insurance

Possible, but does not replace the legal duties originating in the compulsory statutory accident insurance. Therefore is of no economic interest.

⁴ It is understood that in practice this provision has been used almost entirely to cover diseases that were seriously being considered for addition to the occupational disease schedule.

**Organizational
Framework**

Germany's industrial accident system, known as the Industrial Injuries Insurance Institutes (III) has three parts: General Accident Insurance, including Accidents of Sea Insurance, covering industrial and commercial undertakings (funded by employers); Agricultural Accident Insurance, covering agricultural and horticultural enterprises (funded by state subsidies and regional variations); and the public sector (funded by taxes).

General Accident Insurance is administered by 35 Industrial Injuries Institutes ("institutes") which are non-profit organizations, each of which comprises all the firms in a given trade or industry nationwide (some institutes, e.g. in construction, are limited to specific Federal States). Each institute is delegated statutory responsibility for accident prevention and protection of workers from health hazards at work; medical rehabilitation of injured and diseased workers; vocational and social rehabilitation and payment of disability and death benefits.

**Governance
Structure**

Each institute has a "Representatives Assembly" as its legislative body and an Executive Committee. The Assembly and Committee, which work together, are composed of an equal number of employer representatives and worker representatives. A managing director heads the daily operations and advises the Executive Committee.

Institutes are largely self-governing in administering day to day operations. Government's role is largely limited to setting statutory coverage and benefit provisions and ensuring compliance with the law. The Federal Insurance Office, an independent national administration body (Bundesoberbehörde) under the Ministry of Labour and Social Affairs, is responsible for supervising the institutes which have jurisdiction in more than one federal state (Land).⁵ In the fields of prevention and first aid the Ministry of Labour and Social Affairs itself supervises the institutes.

The joint interests and functions of the separate institutes are managed through a central body, the Hauptverband der

⁵ The Federal Insurance Institute is also responsible for supervising the separate sickness insurance institutes that administer the federal sickness and health social insurance programs. Otherwise the Insurance Office of the respective 'Federal State' is responsible.

gewerblichen Berufsgenossenschaften the (HVGB). The HVGB also has a representative assembly and an executive committee each with equal representation of employer representatives and workers.

Agricultural Accident Insurance is also administered by institutes but the representatives assembly and the executive committee are composed of equal representation from employers, workers and the self employed without own workers.

Policy Development Unknown.

Accountability The institutes are accountable to their membership and to the HVGB.

Performance Assessment Unknown.

**Dispute Resolution
Mediation/
Consiliation** No provisions identified.

Appeals Process

A injured worker has a right of appeal to a bi-partite appeals committee of the institute. The next level of appeal is to a "social justice" court. The forgoing appeal to the appeals committee is obligatory before taking action to the "social justice" court. The institute must cover the costs of the appeal process, win or lose; there are no costs to the worker.

If an institute denies its jurisdiction over an employer it refers the enterprise to the competent institute and formally informs the employer. If he does not agree he can take action to the court.

ASSESSMENTS /
FINANCING

**Assessment or
Premium Setting
Process**

Each institute sets the premiums paid by its employer members. Premium rates vary among employers depending upon the employer's risk class (there are about 700 risk classes in all 35 institutes together) industries covering declining industries. The law provides a balancing system for this case.

**Assessment/
Premium Rates**

The workers' compensation program is wholly supported from contributions from employers (except for government coverage for students and children and a government subsidy to the Agricultural Accident Fund).

The average employer contribution, or premium rate in 1996, is 1.42% of payroll (1.43% in 1993 and 1.39% in 1991).

Institutes are required to maintain a reserve to handle annual fluctuations in loss experience, and therefore premiums are set higher than required under a "pay as you go system". Premiums are not high enough however for the operation to be fully funded and in the past certain institutes have experienced financial difficulties particularly for those industries covering declining industries.

**Second Injury Funds
/ Disaster Funds**

Not applicable.

COMPENSATION
BENEFITS

Claim Rate Frequency of work related accidents declined sharply from 140 per 1000 in 1960 to 40 per 1000 in 1986. More recent statistics were not available.

Medical Aid

Nature of Aid

Medical care benefits coverage is comprehensive, including the total cost of physical rehabilitation and appliances. From the first day on, institutes provide all medical care benefits. To this aim they use a specially designated hospital run by local communities, churches and others as well as the own clinics of the institutes.

Choice of Provider

The institutes control the choice of doctor and hospital. The HVGB licenses doctors to examine and treat injured workers. Only these specialists can be consulted on workers' compensation cases (except minor cases). The institutes own their own hospitals and designate others which have the equipment and staffing to treat serious work injuries⁶.

*Medical Cost
Containment
Initiatives*

Rehabilitation process steered by computer, obligation of doctors to report on recovering process. Development of methods to direct the patient to the specialist best experienced in certain types of injuries (e.g. hand injuries).

⁶ The institutes own 11 hospitals and have designated over 850.

Rehabilitation

*Physical/
Occupational/
Vocational*

The institutes have about 90% return-to-work rate for injured workers using vocational retraining and upgraded vocational qualifications as key strategies⁷.

The preferred route is that injured workers should receive vocational training and rehabilitation in the workplace. However, disabled workers who are not able to be retrained by their employer receive vocational rehabilitation through residential vocational rehabilitation centres (in 1996 there were 27 centres throughout Germany with 15,000 training places and training in 160 occupations). The rehabilitation centres receive one-third of their funding from national pension funds; one-third from the workers' compensation funds; one-third from the institutes). Training generally lasts for 24 weeks and the cost is about 100 DM per day per person. Students who are in residence have their expenses covered to return home twice a month. Injured workers in training receive wage loss compensation.

Social

Rehabilitation benefits include home help and rehabilitative sports, as well as cost of travel for receipt of medical aid or rehabilitation.

⁷ The *Rehabilitation Harmonization Act*, which covers health insurance funds, pension insurance and accident insurance funds, the social compensation fund and the federal employment office, has harmonized to a great extent the various benefits to be provided by the individual funds according to their area of responsibility. Where several rehabilitation funds are involved (i.e., health insurance, pensions insurance, accident insurance, and the social compensation funds and the federal employment office) all parties must work closely with each other in the interest of rapid and lasting integration. If several funds are involved or where several measures are required concerning a particular individual, the funds and offices involved must draw up a general plan for rehabilitation (section 5, *Rehabilitation Harmonization Act*). In 1993, DM 5.66 million DM was expended on medical, 6.2 billion was expended on medical, employment-promotion and social benefits for rehabilitation by the institutes alone. An additional DM (?) million was expended by health insurance funds, pension insurance funds, the social compensation fund and federal employment office for the rehabilitation and integration of disabled persons in the workplace.

**Rehabilitation
Incentives**

For disabled employees there are trial work benefits (continued benefit entitlements while participating in a rehabilitation program).

The institutes may balance a part of the disabled employees' wages to the employer during a limited period. For employers there is "disabled worker" protection, and enforced quota regulations⁸.

**Trends in
Treatment of
Subjective
Complaints**

Since the 1997 reform the institutes have the legal mandate to prevent health dangers caused by work (Verhütung arbeitsbedingter Gesundheitsgefahren). Programs are under development

Disability Benefits

**Short-Term
Benefits -
Temporary
Disability**

Weekly "loss of earnings or wage loss" compensation:

Rate: Workers who are unable to perform their current job receive periodic payments of 80 % of prior gross earnings and subject to a maximum imposed on covered earnings (between 108,000 and 144,000 DM per year depending on the rule of the institute in charge in 1998

Indexed: Benefits are indexed annually to reflect increases in national average earnings.

Duration: During rehabilitation without limit until return to work; if recovering is prognosticated to be impossible 78 weeks.

Taxable: No.

Employer's Excess / Waiting Periods: The employer must continue the worker's salary for six weeks before the employee goes onto short term disability benefits.

⁸ The Severely Disabled Persons Act requires every employer with more than 16 employees to reserve and fill 6% of employment positions with people with severe disabilities. Failure to meet these quotas results in a monthly assessment of 200 DM (about \$180 Cdn) which is paid into a central fund for disbursement, in the form of wage subsidies and other grants, to organizations hiring disabled workers and to severely disabled individuals wanting to integrate into the workforce. In 1995, the average rate of employment for disabled workers was 4.5%; well below the 6% goal. With respect to the statutory protections against the dismissal or lay-off of workers with disabilities, approval of the local social welfare office is necessary to dismiss a disabled worker following the initial six month probationary period.

**Long-Term
Benefits -
Permanent Partial
and Total
Disability**

Economic "loss of earnings or wage loss" awards or pensions:

Rate: Total disability - 66.7 % of latest year's earnings up to a specified maximum payable; Partial total disability - workers with loss of earning capacity due to work injury or occupational disease of 20% or more receive a pension equal to 66.7% of the latest year's earnings up to the specified maximum earnings. The percent supplement for workers with no other pension and allowances for dependent children are payable only if the earning capacity loss is at least 50 percent up to the specified maximum earnings and depending on the percentage of loss of earning capacity (e.g. loss of earning capacity = 50%, latest year's earnings = 60,000 DM; 66.7% of 60,000 DM = 40,000 DM; 50% of 40,000 DM = 20,000 DM annual pension).

Indexed: Benefits are indexed annually to reflect increases in national average earnings.

Duration: No limit. Old-age pension may be shortened.

Taxable: No.

Offset Against Other Social Security Benefits: Workers compensation pensions are integrated with other pensions and benefits. A workers' compensation pension reverts to a social insurance pension when the individual reaches 65. An old-age pension may be shortened when the individual reaches the pension age.

Award for permanent physical impairment:

A worker's compensation pension granted for example loss of a member is calculated on an abstract basis. The (general) periodic payment shall compensate that loss (Prinzip des abstrakten Schadensersatzes). That means the victim receives the payment even if he or she may earn more after retraining, because of the accident. In cases of entitlement to smaller pensions (less severe injuries) a lump sum may be paid instead of periodic payments. This figurement is covered according to the general rules that means when the accident results in 20% or more loss of employment capacity (e.g. loss of an eye).

Periodic (pension or annuity): None.

Lump-sum: None.

Covers Disfigurement: Not known.

Impairment Schedule: Although there is no official impairment schedule, doctors who have to give an expertise on the degree of loss of employment capacity are guided by a schedule base

on experience. This schedule found in general commentaries on the social insurance code is based on the severity of the injury and a resulting impairment score under the utilizability for the general labour market. Medicines and the institutes and courts sophisticate this experience based schedule continuously.

Supplemental Awards: A flat supplement is provided for the worker requires constant attendance and there is an allowance for the reasonable costs of special clothing and devices.

Hearing Loss

No special provisions identified.

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Death Benefits

Funeral Expense Benefits

Funeral Costs: The scheme covers the actual and reasonable funeral expenses.

Emergency Lump-sum: A lump-sum "death grant", equivalent to one month's earnings, is provided to the surviving dependents.

Survivor Benefits

<u>Survivor Category</u>	<u>Lump-sum</u>	<u>Pension</u>
Wholly or mainly dependent survivor	None.	30% of the deceased's prior earnings; if survivor 45 or over, an invalid, or has dependent children, 40%, plus for first three months, transitional aid grant equal to difference between deceased worker's fully salary and survivor pension.
Dependent children	None.	20% of deceased's prior earnings until age 18, or 25, if student or an invalid; 30% if no surviving parent.
Dependent parent or grandparent	None.	As required, if need demonstrated. [Maximum of 80% of deceased's prior earnings for all survivor pensions combined]

**HEALTH & SAFETY
& PREVENTION**

Organization

Structure

*Agencies
Responsible*

There are two levels of occupational health and safety legislation: the state legislation on the federal level, executed by state authorities on the regional level (Länder) level, on the one side; on the other side, internal accident prevention regulations of the institutes which are government by self administration, and coordinated by the HVGB.

Early identification and intervention, as well as the adaptation of the work to the workers, is a primary goal of the system. Occupational health and safety and prevention of workplace accidents is a overall central responsibility of both the state authorities at the Länder level and the institutes.

The state authorities at the Länder level and the technical inspectors of the institutes are both and partly concurrently responsible for the implementation of OHS regulations and standards. Both have the power to perform worksite inspections to ensure compliance with health and safety standards and regulations. These two bodies have to cooperate with and inform each other of the results of their inspections.

Source of Funding

The state authorities are funded by the government on the Länder level; the technical inspectors of the institutes are funded by the contribution of employers to the institutes.

Accident Reporting

All workplace accidents and injuries must be reported to the institutes and the state authority.

**OHS Representatives
& Committees**

Workplace OHS committees are required in any workplace with more than 20 employees. In smaller firms, workplace safety representatives are required. The employers cover all necessary training costs for committees and safety representatives.

Offenses & Penalties

Criminal offenses under the legislation are possible. However, criminal offenses are rarely used in favour of administrative sanctions. In 1995, the state authorities issued 900,000

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**OHS Legislative
Review**

administrative objections and the institutes issued 2 billion. There is no legislated requirement that the OHS legislation must be reviewed at regular intervals. However, the OHS legislation and standards, at the both the state and institute level, are regularly reviewed and kept up to date. In 1996/97 OHS legislation, as well as occupational accident insurance legislation (workers' compensation insurance) was modernized and rewritten.

**Health and Safety
and Loss Prevention
Initiatives**

Employee and supervisor training in prevention and health and safety is a key initiative of the institutes⁹. Institutes also conduct research into hazardous workplace substances and machinery.

**FRAUD
PREVENTION**

No programs identified.

⁹ Health and safety training is not just on site. The institutes have special training centres or academies for employees and supervisors involved in accident prevention and health and safety.