



Working Women's Information Service

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SAFETY, HEALTH AND WORKERS' COMPENSATION

"More American workers die each year as a result of their job than GI's did in any year of World War II."

THIS is a sobering thought. When we consider the far greater number of workers who suffer injury or deterioration in their health because of the work they perform or conditions under which they work, it is clear that compensation for such disabilities is one of the most important issues for unions.

The matter has recently been brought to the fore in Victoria by the passing of amendments to the Workers' Compensation Act.

WHO IS COMPENSABLE ?

In Australia workers' compensation is provided for by separate legislation in each state and territory. Commonwealth government employees are covered by the Compensation (Commonwealth Government) Employees Act. There are certain basic conditions common to all the legislation, namely:

1. There must be an employer and a worker or person the legislation deems to be a worker.
2. Between the employer and the worker there must be some relationship of employment.
3. There must be an injury to the worker and this injury must arise out of and/or in the course of employment or be deemed by the legislation to do so.
4. Compensation is payable as of right, regardless of negligence on the part of the employer, the worker or his fellow employees: except where the worker's injury results from his serious and wilful misconduct and does not result in death or serious disablement or where the injury is intentionally self-inflicted.
5. The employee's right to compensation is not affected by the employer's failure to ensure. (2)

WHAT IS AN INJURY ?

"Injury" means any physical or mental injury and, until the amendments introduced by the Victorian Government in 1979 and passed early this year, it included:

- (a) a disease contracted by a worker in the course of his employment whether at or away from his place of employment and to which the employment was a contributing factor; and
- (b) the recurrence aggravation or acceleration of any pre-existing injury or disease where the employment was a contributing factor to such recurrence aggravation or acceleration.

The new Act, however, provides for compensation only where the work substantially contributed to the disease or its recurrence, aggravation etc. After considerable union pressure it has been proposed that this wording be altered to "contributes to a recognizable degree". In either case it will be up to the court to decide how significant must be the contribution of the work to the disease before it is recognized as meriting compensation.

Employers already do their best to argue that such injuries as heart attacks, strokes and back injuries are not caused by the work performed but are due to other factors. The introduction of such a vague qualification will inevitably lead to endless wrangles in the courts.



WHO GETS THE MONEY ?

In introducing the amendments referred to above the Government made it plain that it was anxious to cut the high cost of workers' compensation. In 1973-74 almost a third of all money paid out on workers' compensation claims was consumed in medical and legal costs. In addition, according to the Harris Inquiry, "an unidentifiable amount was paid in common law cases and very large amounts were paid in administrative costs".(3)

It is obvious that in future far more money will be paid out to lawyers, thus raising considerably the cost of compensation without contributing any more to the injured workers. However the main cause of concern to unions in Victoria is that many workers will miss out on compensation altogether.

Although it may be apparent that a disease has been aggravated by the work performed by the injured person, it is exceedingly difficult to prove just how much of the injury is due to the work and how much might have happened anyway. This is particularly true of the diseases and injuries most commonly suffered by women workers.

INJURIES SUFFERED BY WOMEN

The majority of women workers are employed on monotonous repetitive tasks which at first glance appear simple and unlikely to produce any strain or injury. It is only over a period of time that workers become aware of aches or pains - usually in fingers, hands or arms - which, although not so dramatic as the type of injury likely to be sustained by a worker on a building site, may nevertheless cause increasing discomfort and may ultimately make it impossible for the sufferer to continue working. These aches and pains are usually symptoms of tenosynovitis - a swelling of the tendons caused by rapid repetitive movements.

It is impossible to obtain statistics on all the industrial injuries which occur in Australia because official records are kept only of those for which compensation is paid. In 1974-75 (latest figures available) 44.8 per cent of all claims for which compensation was paid to women were related to injuries to hands or arms.(4)

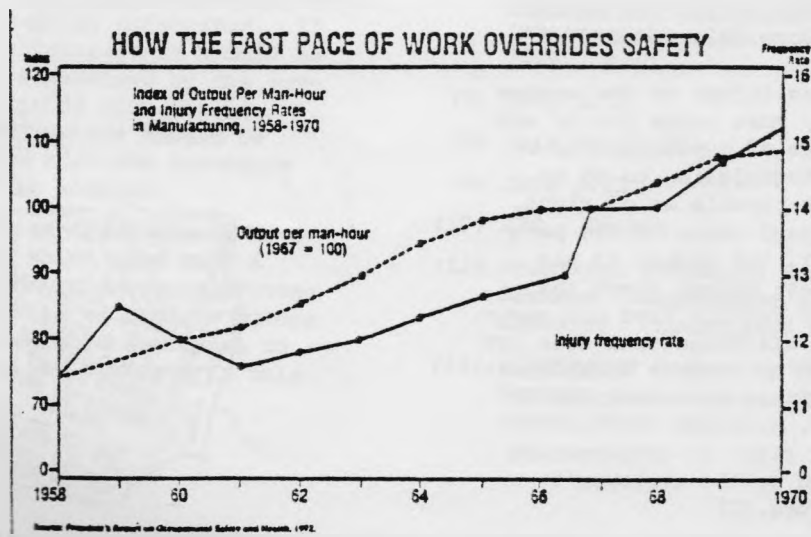
CAUSES OF INJURIES

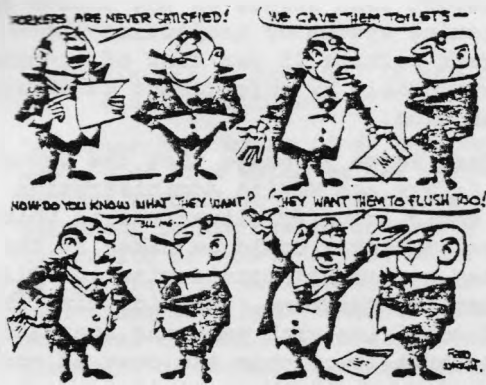
Many women work on a payment-by-results system: that is they get a flat rate plus a bonus graded according to the number of articles processed above the standard number. The essence of the contract is speed. Practice increases dexterity and speed at a particular process. Workers are therefore loath to alternate between different processes even if given the opportunity to do so. It is not uncommon for workers to remove safety guards from machines so as not to have to wait for the guard to move up and down between operations.

Speed is one of the worst causes of accidents as is illustrated by the graph below. Other acknowledged causes are stress, strain, general tiredness and overlong concentration on a particular task.

The people most subject to chronic complaints are those who work at repetitive jobs under pressure. They are most likely to be women - particularly migrant women. Even in offices - where one would expect conditions to be better than in factories - women tend to be employed on machine work which does not allow them to move about.

Moreover women bear a double burden of stress and tiredness because their husbands, male workmates and employers all expect them to accept the major responsibility for care of their families even if they have fulltime jobs. This in turn means that few women are promoted to supervisory positions and most continue in the same job for the whole of their working lives.





One form of stress to which women are frequently subjected is sexual harassment by men who are senior to them or even by workmates. This form of stress is seldom reported but can cause a complete breakdown in health, particularly in migrant women for some of whom such harassment causes such shame that they cannot even speak about it.

It is usually not difficult to have a claim for compensation accepted when the injury can be shown to result directly from an accident, no matter what the cause. However it is much more difficult to prove that general deterioration of health has been caused by a particular job or condition of work. This is evident from the fact that in 1974-75 Victorian

insurance companies accepted 34,781 claims arising from industrial accidents compared to only 1809 due to job-induced or aggravated diseases. (5)

Job-induced stress is sometimes accepted as the cause of breakdown in health in the case of men in high executive positions. It is much more difficult for a woman with a routine job to prove that the sheer repetitiveness of her job has induced the same condition.

NO COMPENSATION FOR OUTWORKERS

The women who are worst off of all are those who work at home on piece rates. All states and territories except New South Wales and Queensland expressly exclude outworkers from coverage under their workers' compensation legislation. Because the rates of pay are usually so low, the women sit for hours on end - often at night when their children are asleep - performing the same rapid repetitive movements, backs bent, necks rigid and eyes straining. No health inspector calls to check whether their working conditions are safe and healthy. If, through tiredness, they run the machine needle through their fingers or merely succumb to chronic digestive tract complaints which may lead to hospitalization and/or surgery, there is no compensation for them.

PREVENTION BETTER THAN COMPENSATION

Important as it is to ensure adequate compensation for all people who suffer any injury through their work, it is more important to improve the conditions under which they work in an effort to minimize accidents and damage to health.

One of the problems in Australia is the number of authorities responsible for legislation concerning health and safety and its implementation. Apart from the fact that we have separate legislation for each of the six states, two territories, Commonwealth employees and also for seamen, we also have a situation where several government authorities may be involved in the administration of the law in any state. In Victoria, for instance, safety matters are administered by the Department of Labour and Industry but general health comes under the Health Commission. Workers' compensation is administered by a separate authority - the Workers' Compensation Board - and conditions of work are regulated by determinations of the various wages boards or by awards negotiated through the Australian Conciliation and Arbitration Commission.

There is no national policy on occupational health and safety and no evidence of any attempt to assess the effectiveness of existing legislation and its implementation. Australia is not alone

in this. A background paper on Safety and Health and the Working Environment, prepared for the 66th Session of the International Labour Conference to be held in 1980, states that "there are few countries which in recent years have carried out a general survey of their occupational safety and health measures". (6) The paper summarizes some of the most effective measures which have been taken. Below is a short account of some of the measures which have been recommended or tried in other countries. They may provide unions with some ideas as to how they could improve the health and safety of their members.

UNITED KINGDOM

In 1972 a Committee of Inquiry under Lord Robens presented a report which, according to those who prepared the ILO paper, provided "an unprecedented thorough evaluation and analysis, the bearing of which extends far beyond the United Kingdom". It looked at legislation, inspection, training, research, information, statistics, relations between accident compensation and prevention, organizations of safety in undertakings, organization at the industrial and national levels, the role of employers, employees and government. It recommended an integrated policy, the main elements of which have already been put into practice in Britain.

Firstly, a Health and Safety at Work Act was passed in 1974. This Act lays down the general duties of employers to their employees and of manufacturers, suppliers etc. with regard to articles for use at work and the general duties of employees at work. It established a national Health and Safety Commission composed of a chairman and from six to nine members appointed by the Secretary of State for Employment, including three members appointed in consultation with organizations representing employers and three others appointed in consultation with organizations representing employees. The Commission has wide powers and a budget of its own.

Probably the most important change resulting from the Act was the unification within a single central body of the inspection services concerned with factories, mining and quarrying, railways, services, agriculture, explosives, nuclear installations and industrial pollution.

Essential recommendations of the Robens report were:

- * acceptance and exercise of appropriate responsibilities at all levels within industry and commerce;
- * better systems of safety organization;
- * more management initiatives; and
- * more involvement of work people.

The greatest obstacle to application of the recommendations was considered likely to be resistance to change to established systems and practices. The writers of the ILO paper comment that the emphasis on self-regulation and responsibility of the social partners (employers/employees) in the Robens report presupposes advanced stages of maturity and social conscience and a long tradition of industrial relations.

UNITED STATES

An Interagency Task Force on Workplace Safety and Health appointed by President Carter in 1977 is less optimistic about the results which can be expected by self-regulation. It found that "in many industries the average cost of worker injuries is sufficiently small that management focuses on other cost problems first".

The Task Force also pointed out that, even in those sectors where occupational accidents were particularly frequent and costly, the high cost of workers compensation was rarely felt to be a burden since those industries have been able to pass their costs on to customers. The Task Force considered making employers pay a tax on injuries but felt that such a method would be socially unacceptable as it would allow a choice between elimination of the hazard and payment of a charge that would relieve the employer from taking safety measures.

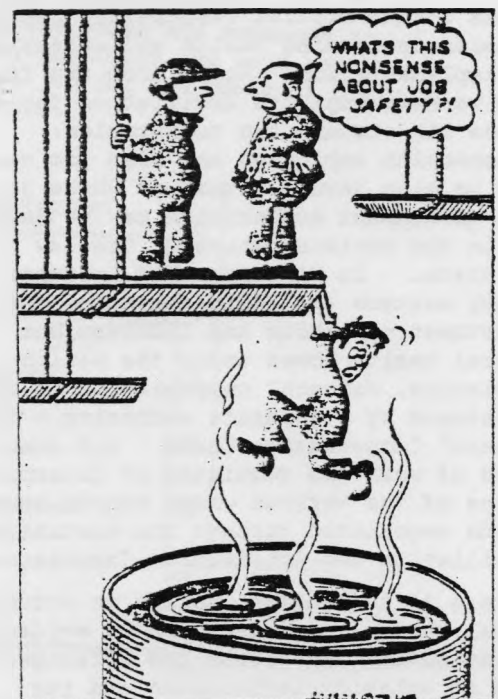
The report laid stress on the limits of the existing system of inspection and found that perhaps 25 per cent of injuries were preventable by enforcement of existing standards.

The Task Force proposed that the Occupational Safety and Health Administration (OSHA) could identify situations in which technical measures could be taken at the time when a firm was considering installing new plant or equipment, at which time the cost of complying with existing standards would be much lower than the cost of modifying equipment already installed.

The Task Force also recommended that joint voluntary committees be set up for each branch of economic activity to identify the main problems and work out solutions. It considered that the Federal Government should play a more important role in the dissemination of information relating to technical occupational safety and health measures and in the promotion of research to improve such methods. However it felt that the establishment of joint safety and health committees should be left to the initiative of employers and employees. It recommended that OSHA should concentrate on 'high-risk' establishments.

SCANDINAVIA

Like the United Kingdom and the United States, Norway, Sweden and Denmark have opted for a central authority to deal with occupational health and safety. The legislative and supervisory systems of these countries are directed towards measures of improving the working environment rather than to provisions based solely on protection of the individual and are designed to strengthen his/her ability to avoid risks which are inherent in the work performed.



Liberation News Service

CANADA

Under an Act of May 1977 in the Canadian Province of Saskatchewan

"a worker may refuse to do any particular act . . . at work which he has reasonable grounds to believe . . . (is) unnecessarily dangerous to his health or safety or to the health or safety of any other person at the place of employment unless sufficient steps have been taken to satisfy him otherwise or until the occupational health committee or occupational health officer has investigated the matter and advised him otherwise".

FRANCE

France also emphasizes the desirability of eliminating danger rather than of providing protection from it. In a circular issued in 1965 the French Ministry of Labour stated:

"The main endeavour must consist in placing the worker himself in such conditions that he is effectively protected. He will avoid actions that are a danger to him - and of which he must remain well aware whatever his familiarity with his work and whatever protective devices may have been provided - only in so far as he has first been withdrawn from dangerous situations.

"What must be said and if necessary reiterated to those employers who might complain of the burden of regulations is that it is up to them to apply boldly, whether by steps taken within their undertaking or through active participation in outside safety organizations, those effective measures of prevention which, in so far as they will be generally applied, will alone make it possible to relieve the pressure of statutory requirements and even to simplify their content."

France has legislation which provides that the internal layout of undertakings regarded as dangerous or unhealthy shall be defined by Prefectoral decrees before use can be made of the premises.

EASTERN EUROPE

In the USSR the State Committee of the USSR Council of Ministers for Standards establishes for the various industries technical standards of safety which are legally enforceable while the general standards of safety applicable to all industries emanate from a body operating under the All-Union Central Council of Trade Unions. In Czechoslovakia the safety standards promulgated by the Central Bureau of Standards are likewise legally enforceable. They contact very detailed technical provisions relating to the design and layout of plant, the use of machinery, the introduction of new manufacturing processes etc.

The USSR All-Union Council includes a workers protection department staffed with inspectors. The system operates at all levels - regional and local and in individual undertakings. Government action is supplemented by worker supervision through the trade unions. In 1971 there were some 3500 technical inspection staff who were employed fulltime by their respective trade union authorities and supported by part-time inspectors.

Denmark, Finland, France, the Federal Republic of Germany, Norway, Sweden, the United Kingdom and - to some extent - Italy and Spain all have legislation which prescribes in detail the duties of manufacturers, importers, sellers and leasers of equipment for occupational use as well as the duties of suppliers of substances intended for such use.

PENALTIES

Some countries are increasing penalties which can be inflicted on persons guilty of violations of occupational safety and health laws and regulations, especially in cases of serious and repeated infringements which have resulted in accidents. French legislation provides that fines shall be imposed as many times as there are workers in the undertaking who are directly exposed to the hazard in question. Some other countries determine the size of fines by taking into account, among other factors, the size of the undertaking. The legislation of a number of countries now provides for terms of imprisonment for those who violate health and safety regulations.

Beginning in 1973 penalty programmes were instituted in the USA designed to make non-compliance with atmospheric pollution standards as costly as compliance. The same system could be applied to occupational safety and health standards.

MOST ACCIDENTS PREVENTABLE

There is evidence to support the view that accidents are built into most industrial work and that changes in the design of the work would bring about a significant improvement in the accident rate. Where there are defects in equipment it is usually in the design stage. However it has been found that the most serious deficiencies are in organization, methods of work and supervision rather than in the equipment itself.

The ILO report recommended that operator training was worthwhile from the point of view of safety as well as for increasing production. It claimed that much of what was known about the modification of existing systems of work to reduce risk remained unapplied because communication between shopfloor and office was ineffective.

WHO IS RESPONSIBLE FOR SAFETY ?

According to the Robens Report,

"THE PRIMARY RESPONSIBILITY FOR DOING SOMETHING ABOUT THE PRESENT LEVELS OF OCCUPATIONAL ACCIDENTS AND DISEASE LIES WITH THOSE WHO CREATE THE RISKS AND THOSE WHO WORK WITH THEM".

Japanese legislation requires employers to carry out supervision of safety measures on their own initiative. The appropriate authority may also prescribe the establishment, in consultation with the workers or their organizations, of a plan of improvement of occupational safety and health conditions. The public authorities have to promote, by financial and technical means, the carrying out of those plans, paying particular attention to small and medium-sized undertakings.

Several countries, including Japan and Australia, give technical and material assistance to small businesses to help them instal safety measures.

According to the ILO paper, it is generally held to be reasonable that some portion of the resources of insurance companies and of social security institutions administering accident insurance should be devoted to accident prevention.

WORKERS SHOULD HAVE A SAY

Workers should have a large say in the measures taken to ensure their safety and in the systematic supervision of those measures. When they are not consulted

before new equipment and procedures are introduced the devices are often inappropriate and workers will not co-operate to implement them.

In 1975 the European central trade union organizations held an important conference at Geneva on humanization of the working environment and occupational safety. Conference declared that:

"Workers should be associated with the planning and installing of a safe and healthy environment contributing to their well-being; that legislation and collective agreements concerning the working environment must open the way to the election of safety delegates representing the workers on questions of occupational safety and health; and that the workers should not take any risks even if compensated for partly by higher remuneration".(7)

In several countries legislation gives workers' delegates or representatives the right to accompany labour inspectors visiting their workshop or building site.

According to the writers of the ILO report, the appointment of workers' safety delegates is regarded as more efficient than a system of joint management/employee health and safety committees, especially where the delegates enjoy wide rights. Being on the spot, such delegates are in a better position to observe operations than members of safety committees who visit workplaces only from time to time.

THE MOST COMMON CAUSES OF COMPLAINTS

Most of the information in the ILO paper is concerned with accident prevention. Little emphasis is given to the less spectacular diseases caused by stress and strain. In fact the paper states that the number of reported cases of occupational diseases were proportionately too low to merit consideration.

However recent experience has shown that prolonged exposure to substances such as asbestos and lead is even more costly in suffering, medical expenses and loss of wages than fatal accidents because those affected do not die immediately and it takes years before a work/injury relationship is acknowledged.

The less obvious effects of bad posture, poor ventilation, pressure to maintain

output etc. often result in inability to maintain employment.

An enquiry conducted in the Federal Republic of Germany(8) showed that the most frequent causes of complaint by workers were inadequate ventilation, too little room to work, insufficient natural light, noise, uncomfortable seats, lifting and carriage of heavy loads, contact with dangerous substances, work with heavy hand tools etc. A Swedish study in 1975(9) showed that, of all harmful working conditions the most commonly experienced was poor working posture.

With the exception of heavy lifting and the use of heavy hand tools, these are the conditions most likely to be suffered by women.

WHY DO SO FEW WOMEN GET COMPENSATION ?

Although in 1975 women made up 35 per cent of the Victorian labour force, only 25.8 per cent of successful claims for compensation in that year were lodged by women. (10) A study conducted in 1977 by the Brunswick Community Health Service and the Victorian Branch of the Clothing and Allied Trades Union (11) found that men were twice as likely as women to claim workers' compensation.

There is evidence to suggest that this is partly because the injuries most commonly suffered by women are seldom recognized as having been caused or aggravated by their work. Another reason why they do not show up in workers' compensation statistics is that they seldom cause long absences from work - at least in the early stages - and the official records only take account of absences of at least one week.

It is likely that women tend to take only two or three days off work when they suffer from backache, tenosynovitis or excessive tiredness and do not bother to claim compensation because they are unaware that they could do so or because they feel they cannot afford the time to seek help in lodging claims.



—Fred Wright, UE News

Because the injury would not be so obviously attributable to the work performed as would be the case in the event of an accident, the sufferer would almost certainly have to go to court to have any hope of receiving compensation. This is a tedious, time-consuming and often intimidating business and a woman is far more likely to claim sick leave if she is entitled to it or simply take a day off without pay. She is even more likely simply to battle on through fear of losing her job if she takes too much time off or because she cannot afford to lose a day's pay.

Most women have an interrupted work life. They leave work to have children and often do not return to the same job later. An injury sustained at one job may not cause

severe discomfort until it is aggravated by return to work at another job. It was difficult under the previous Compensation Act to prove that the injury was caused or aggravated by the work performed. The amendments to the Act can only increase the difficulties already experienced by women in obtaining compensation for damage to their health caused by their work.

NO BENEFITS

Married women are particularly disadvantaged if they are forced to give up their jobs because of ill health and cannot prove that the job is substantially responsible for their poor health. If their husbands are employed they are not eligible for unemployment benefits; nor are they eligible for sickness benefits.

Until recently Victorian men could claim sickness benefits even if their wives were employed but women were not eligible if their husbands were employed. Now neither can get sickness or unemployment benefits if the partner is employed.

For many couples - particularly migrants this is disastrous because both earn such low wages that the couple has no hope of providing a home for themselves and their children on one wage.

RECENT RESEARCH

Claims made probably represent only a small percentage of women who suffer injury as a result of the work they perform.

A recent study carried out by the Flemington Community Health Centre (12) suggests that far more women suffer serious work-related injuries than workers' compensation statistics suggest. The researchers interviewed a random sample of Turkish and South American families living in Housing Commission high-rise flats. They found a very high incidence of industrial accidents and illnesses. Surprisingly, the rate was higher for women (65.7%) than for men (42.5%). The main problems (over both sexes) were hernia and tenosynovitis.

Few of these migrants were aware that they could have obtained help from unions.

It appears that women particularly are unaware of their rights or else it is too difficult for them to prove that the disabilities from which they suffer are attributable to the work they perform.

WHAT CAN UNIONS DO TO IMPROVE HEALTH AND SAFETY CARE ?

The writers of the ILO paper maintain that there can be no doubt that it is under the pressure of trade union organizations that the legislation of some countries, including Italy and Sweden, contains advanced provisions concerning the participation of workers in the supervision of occupational safety and health conditions and the right of their delegates to require suspension of work in situations of serious and imminent danger.

The Harris report on Workers' Compensation suggests that the ultimate aim, in order to provide adequate financial support to the injured and their dependants, must be a national compensation scheme.

It would be advantageous to all workers if unions could pressure the Australian Government to adopt a national compensation scheme which would ensure that no worker would be disadvantaged financially through a work-related injury.

The elimination of the fault concept would reduce the payout on legal costs and the inordinately long periods which frequently elapse between injury and receipt of compensation.

Another major aim should be uniform national legislation covering industrial health and safety. This legislation should be administered by one body.

Unions should insist that such legislation provide for strong worker representation at the shop floor level with authority and weight at the decision-making level in all matters pertaining to safety and health.

Because women appear to be especially disadvantaged by the present compensation system unions could make special efforts to inform their female members of their right to workers' compensation and could encourage them to report all symptoms of distress which might have been caused or aggravated by the work they perform.

It is desirable that all forms of payment by results should be eliminated. If outwork cannot be eliminated it should be much more strictly supervised by the government, in consultation with unions. Anyone employing outworkers should be compelled to provide adequate insurance against injury to the workers.

In several countries trade unions have set up institutions which have made a valuable contribution to accident prevention. In the countries of Eastern Europe unions devote considerable resources to fundamental and applied research in this field.

Unions which do not have sufficient resources to undertake extensive research themselves could co-operate with local community health centres to conduct surveys of their members to ascertain the effects of working conditions, having particular regard to the more subtle forms of stress and strain which have delayed and longterm deleterious effects on the health of workers. These studies might seek an explanation for the disproportionately low number of workers' compensation claims made by and settled in favour of women. It would be useful to know why people retire early or leave their jobs and to make a comparison of the occupations and workplaces which have the biggest wastage for health reasons.

Unions should endeavour to phase out financial rewards which are supposed to compensate for working in a dangerous environment (eg dirt and danger money). It would be much better to insist that the danger be eliminated - as indeed some unions already do. Nothing is too good for the workers.

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