STATUTORY CHANGES IN IOWA WORKMEN'S COMPENSATION

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This Survey supplements and updates the author's 1970 Survey of Iowa Workmen's Compensation.[1] At that time there had been no significant workmen's compensation legislation since 1965 except two changes concerning coverage for corporation executives. However, the General Assembly in 1970 passed a workmen's compensation law which increased benefits, provided compulsory coverage for all employers and employees as defined in the Workmen's Compensation Act, and streamlined procedures. The purpose of this Survey is to explain these amendments, explore new procedures, warn practitioners of possible pitfalls, and predict future developments.

I. COVERAGE

For many years the Iowa workmen's compensation law has been exclusive, compulsory and obligatory upon both employer and employee where the state, county, municipal corporation, school district, county board of education, or city is the employer.[2] The Act was also compulsory where the employer was engaged in the operation of coal mines or other methods of producing coal.[3] In all other employments, unless either the employee or employer rejected coverage before injury, both parties were conclusively presumed to have elected workmen's compensation coverage.[4]

The omnibus workmen's compensation bill passed by the Sixty-third General Assembly[5] simplified coverage by providing that now:

> [e]very employer, not specifically excepted by the provisions of this chapter, shall provide, secure, and pay compensation according to provisions of this chapter for any and all personal injuries sustained by an employee arising out of and in the course of the employment, and in such cases, the employer shall be relieved from other liability for recovery of damages or other compensation for such personal injury.[6]

The rights and remedies of the act are exclusive of all other rights and remedies of an injured employee, his personal or legal representative, dependents, or next of kin, at common law or otherwise, on account of such injury.[7]

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1 Dahl, *Iowa Workmen's Compensation*, 19 DRAKE L. REV. 393 (1970).
2 IOWA CODE § 85.2 (1966).
3 *Id.* § 87.14.
4 *Id.* §§ 85.3, 85.17, 85.20.
5 Ch. 1051, [1970] Iowa Acts 64.
6 IOWA CODE § 85.3(1) (1971).
7 *Id.* § 85.20.

The effect of the amendments is to make the law compulsory and exclusive for all private employers and their employees subject to the Act who provide security for compensation, as well as for all governmental employers and employees. Before the amendment, either an employee or employer, before the employee was injured, could reject the Act voluntarily by completing and filing the prescribed forms with the industrial commissioner.[8] If an employer had failed to provide security for compensation payments by either being relieved of the insurance requirement by the insurance commissioner or by buying insurance in a company approved by the insurance commissioner, he could be said to have involuntarily rejected coverage and his employee after injury could maintain a common law suit for unlimited damages, with defenses of the fellow-employee doctrine, assumption of risk, and contributory negligence abrogated.[9] Although at first this might seem like an excellent opportunity for the injured worker, on sober second thought it can be seen that any employer who cannot afford to buy insurance or to pass muster before the insurance commissioner for self-insurance probably is judgment-proof.

Under the former act, the penalties for failure to secure compensation were not consistent. If a coal mine operator did not insure he was subject to common law suit,[10] fine,[11] and injunction.[12] If an employer with more than five persons engaged in "hazardous employment" (not explained or defined in the Act) did not insure or provide a bond approved by the industrial commissioner,[13] he was subject to common law suit,[14] fine,[15] and injunction.[16] If a county, city, municipal corporation, school district or county board of education did not insure it was subject to common law suit,[17] fine,[18] and injunction[19] if it has more than five employees in hazardous employment. All other employers who did not insure were subject to common law suit or fine.[20]

Under the amendment, if an employer has not complied with the security requirements of the Act, he is liable in case of injury to any workman in his employ under the common law as amended by statute.[21] There is a new provision which permits every employee either to enforce his liability at law for damages or to collect workmen's compensation.[22] If the employee chooses to seek damages the following rules apply.

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8 IOWA CODE §§ 85.4-.6 (1966) (employer's rejection); *Id.* §§ 85.7-.15 (employee's rejection).
9 *Id.* § 87.1.
10 *Id.*
11 *Id.* § 87.14.
12 *Id.* § 87.15.
13 *Id.* § 87.16.
14 *Id.* § 87.1.
15 *Id.* § 87.2.
16 *Id.* § 87.19.
17 *Id.* § 87.1.
18 *Id.* § 87.2.
19 *Id.* § 87.19.
20 *Id.* §§ 87.1-.2.
21 IOWA CODE § 87.1 (1971).
22 *Id.* § 87.21.

1. It shall be presumed:
   a. that the injury to the employee was the direct result and growing out of the negligence of the employer.
   b. That such negligence was the proximate cause of the injury.
2. The burden of proof shall rest upon the employer to rebut the presumption of negligence, and the employer shall not be permitted to plead or rely upon any defense of the common law, including the defenses of contributory negligence, assumption of risk and the fellow servant rule.[23]

Furthermore, if the injured employee chooses to proceed under the workmen's compensation law and, being dissatisfied with the decision, takes an appeal to the district court as provided in section 86.26, he has the right of trial by jury upon the issues of fact tendered.[24] Obviously, the incentive is overwhelming for employers to be sure that they have made the proper security arrangements for workmen's compensation coverage.

Workmen's compensation resembles tort law in that it is a substitute for an action in negligence by an employee against his employer for injuries arising out of and in the course of the employment. It also contains elements of contract law because it requires that a contract of employment, express or implied, exist at the time of injury.[25]

The Iowa Act has always provided for settlement of a workmen's compensatio case without a hearing by agreement, which presumed a contractual arrangement between the employer and employee. If the employer and employee reach an agreemnt in regard to the compensation, a memorandum thereof must be filed with the industrial commissioner by the employer or the insurance carrier.[26]

Iowa's statute has nearly all the requirements of an agreement state; however, it lacks the distinguishing characteristic of a true agreement state since it is not necessary to have the industrial commissioner approve an agreement before there is an obligation to begin compensation payments.[27] Iowa's statute specifically provides that unless the industrial commissioner notifies the employer or the carrier and the employee of disapproval of the agreement within 20 days, the agreement stands as approved.[28] In effect, the so-called agreement is an agreement to assume liability rather than an actual contract between the employee and employer.

No one can object to this procedure so long as the employee is paid the correct amount of compensation and is paid on time. Unfortunately, there are good reasons for the employer or insurance carrier to take plenty of time to determine if the claim is clearly compensable. First, the filing of a memo-

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[23] *Id.*
[24] *Id.* § 87.24.
[25] Johnson v. City of Albia, 203 Iowa 1171, 212 N.W. 419 (1927).
[26] IOWA CODE § 86.13 (1971).
[27] Berkowitz, *The Processing of Workmen's Compensation Cases*, 51 D.L. BULL. 310 (1967).
[28] IOWA CODE § 86.13 (1971).

randum of agreement with the industrial commissioner establishes as a matter of law that the employee-employer relationship existed and that the employee's injuries arose out of and in the course of the employment;[29] second, the penalties for failure to file the memorandum of agreement are insignificant;[30] and third, the payment of weekly compensation without filing a memorandum of agreement stops the running of the statute of limitations for an employee commencing an arbitration action and can be considered an admission of liability.[31]

Under the amended statute, the employer is required to pay compensation, and the employee (or his dependents in case of his death) is required to accept it.[32] The payment of compensation is not contingent upon an agreement at all, and as has been pointed out, probably never was. Therefore, there is no reason to perpetuate this unnecessary agreement provision. Section 86.13 should be amended to require that the employer or its insurance carrier file a notice with the industrial commissioner within three days after the payment of weekly compensation has begun. Inasmuch as there would be no agreement to review in the event a dispute arose over the extent of disability, section 86.34 concerning the so-called review-reopening of an agreement or award should be repealed and section 86.37 amended to delete provisions for the place of holding review-reopening hearings. All disputes, whether weekly compensation had been paid or not, would first be heard by a deputy industrial commissioner in arbitration and then reviewed by the commissioner. To speed the hearing of workmen's compensation cases, it would be desirable to remove the district court entirely from the appeals structure and provide that all appeals be directly from the industrial commissioner to the supreme court. Appeals are taken only on questions of law,[33] so the number of appeals is small.[34]

The General Assembly, appreciating the best interests of the employer, the employee and the community, which very well might be called upon to render relief to an injured workman who does not have a finanically responsible employer to pay compensation, wisely amended the Act to make the industrial commissioner rather than the insurance commissioner responsible for checking the employer's insurance.[35] Because the industrial commissioner usually receives any complaint on behalf of an injured employee when payments are not promptly forthcoming, he is in the best position to carry out this function. Unfortunately, the General Assembly did not see fit to make an appropriation to permit the industrial commissioner to hire a staff to carry out the necessary insurance checks.

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29 Whitters & Sons, Inc. v. Karr, 180 N.W.2d 444 (Iowa 1970).
30 Dahl, *Iowa Workmen's Compensation*, 19 DRAKE L. REV. 393 (1970).
31 IOWA CODE § 86.13 (1971).
32 *Id.* § 86.26.
33 *Id.* § 86.30.
34 In the fiscal year July 1, 1969, to June 30, 1970, appeals were taken to the district court from 17 decisions where the commissioner reviewed a deputy's arbitration decision, and from 25 decisions where a deputy reviewed an agreement or prior award. Eight district court decisions were appealed to the supreme court.
35 IOWA CODE § 87.1 (1971).

Until the 1970 amendment, the Workmen's Compensation Act provided that no compensation should be allowed for an injury caused "[b]y the employee's willful intent to injure himself or to willfully injure another."[36] This provision was clear and concise in excluding suicide.[37] It provided for a situation where the employee had definitely taken the initiative to harm himself or another and was not merely a victim. There was another exclusion stating that compensable injuries should not include those "caused by the willful act of a third person directed against an employee for reasons personal to such employee, or because of his employment."[38] The first branch of this statute excluded coverage where the employee was the victim of an assault for personal reasons aside from the employment and was not the aggressor. But, a hotel clerk was awarded compensation for injuries suffered in an altercation with a boisterous guest over his key.[39] The supreme court has said that the second branch of the statute, which excluded from coverage injuries caused by an act directed against the employee because of his employment, "does not appear to scintillate with lucidity."[40] The legislative history of this branch suggests that the draftsmen combined two unrelated provisions of the New York Workmen's Compensation Act with this confusing result.

The Iowa General Assembly cleared up the ambiguity thus resulting in assault cases by striking section 85.61(5b) entirely and adding to section 85.16 a new subsection providing that no compensation shall be allowed for an injury caused "[b]y the willful act of a third party directed against the employee for reasons personal to such employee."[41] Now there should be no question that the employee who is injured while attempting to kill himself, to murder, to maim, or batter another, or who is injured by another for personal reasons apart from the employment, is not entitled to compensation.

The Sixty-Third General Assembly worked hard to clarify the exclusion for casual employments. Before then, one section had provided that the Act should not be applicable to "[p]ersons whose employment is of a casual nature,"[42] and another stated that the definition of "workmen" does not include persons "whose employment is purely casual and not for the purpose of the employer's trade or business."[43] The Iowa court has held that the latter provision is paramount,[44] and that in order for the exclusion to apply it must clearly appear that the employment was "purely casual" and "not for the purposes of the employer's trade or business."[45] The employer had the burden of proving both conditions.[46]

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36 IOWA CODE § 85.16(1) (1966).
37 Schofield v. White, 250 Iowa 571, 95 N.W.2d 40 (1959).
38 IOWA CODE § 85.61(5b) (1966).
39 O'Callahan v. Dermedy, 197 Iowa 632, 196 N.W. 10 (1923).
40 *Id.* at 634, 196 N.W. at 11.
41 IOWA CODE § 85.16(3) (1971).
42 IOWA CODE § 85.1(2) (1966).
43 *Id.* § 85.61(3a).
44 Garrison v. Gortler, 234 Iowa 541, 13 N.W.2d 358 (1944).
45 Schuler v. Holmes, 242 Iowa 1303, 49 N.W.2d 818 (1951).
46 Garrison v. Gortley, 234 Iowa 541, 13 N.W.2d 358 (1944).

The General Assembly repealed the provision that the Act was not applicable to "[p]ersons whose employment is of a casual nature"[47] and substituted in lieu therefor the statement that the Act is not applicable to "[p]ersons whose employment is purely casual and not for the purpose of the employer's trade or business."[48] Inasmuch as it did not repeal the provision under "definitions" that employees do not include persons whose employment is purely casual and not for the purpose of the employer's trade or business,[49] there is no longer a difference of statement in the statute and the practitioner should have no trouble in determining that persons whose employment is purely casual and not for the purpose of the employer's trade or business are not within the Workmen's Compensation Act.

For many years the state government, through the office of the industrial commissioner, paid workmen's compensation for sheriffs, marshals, constables, and other law-enforcement officers injured or killed while performing their official duties.[50] Confusion arose as to who were law-enforcement officers under the section. Most recently, a probation officer appointed by the three judges of a judicial district was held an employee of the seven counties making up the district rather than a law-enforcement officer.[51] In 1971, the Sixty-Fourth General Assembly in its first session repealed the section imposing compensation responsibility for law-enforcement officers on the state and shifted it to the county, city, or town employing them.[52] In 1971, the General Assembly also amended the act to permit counties to elect workmen's compensation coverage for county jail inmates injured or killed in the performance of work connected with the maintenance of a county jail, other local facility, or highway.[53]

II. Benefits

Workmen's compensation benefits include medical, surgical, osteopathic, chiropractic, podiatrial, nursing and hospital services and supplies in unlimited amount.[54] However, if the aggregate exceeds $7,500.00, the claimant must apply to the industrial commissioner for the allowance of additional amounts and the commissioner may order payment.

Until the 1970 amendment, the commissioner could order payment for additional surgical, medical, osteopathic, chiropractic, podiatrial and hospital services and supplies. He was not authorized to order additional nursing care. In the case of those few unfortunate workmen who are permanently and totally disabled, such services might be necessary. Accordingly, the General Assembly provided that the commissioner could order additional nursing services

47 Iowa Code § 85.1(2) (1966).
48 Iowa Code § 85.1(2) (1971).
49 *Id.* § 85.61(3a).
50 Iowa Code § 85.62 (1966).
51 McClure v. Union County, 188 N.W.2d 283 (Iowa 1971).
52 Sen. File No. 474 (approved May 27, 1971).
53 *Id.*
54 Iowa Code § 85.27 (1971).

when the aggregate of all the benefits for professional and hospital services exceeded $7,500.00.

Death benefits under the Iowa Act are payable for 300 weeks to the surviving spouse, children, or in some cases, stepchildren.[55] When there are neither surviving spouse nor children, benefits may be paid to other dependents. The General Assembly did not change the number of weeks allowable for dependents, but did provide that the burial allowancd be increased from $500.00 to $1,000.00.[56] The Workmen's Compensation Act allows weekly compensation to an injured employee to cover loss of wages while temporarily disabled for as long as 300 weeks.[57] Before the 1970 amendment the weekly maximum benefit ranged from $40.00 to $56.00 per week, depending on the number of the employee's minor children.[58]

When the injury results in permanent parital disability, either to an unscheduled member such as the arm, eye, leg, or hand, or to an unscheduled part such as the back or nervous system, an additional award can be made even though the employee has returned to work.[59] Compensation for permanent disability is paid for the scheduled injuries up to 230 weeks,[60] and unscheduled injuries to 500 weeks.[61] Before the amendment, the schedule not only stated the maximum number of weeks during which compensation could be paid, but also stated the total dollar amount for all losses.[62] The maximum weekly compensation payable for permanent disabilities was determined by dividing the number of weeks allowable into the dollar amount.[63] This manner of determining the weekly allowance for each type of injury caused great confusion after the General Assembly amended the Act in 1959 because the weekly amounts allowable for various types of scheduled injuries did not come out to even dollar amounts and resulted in seventeen different rates.[64]

Clearly, the easy way to set the weekly compensation allowable for scheduled or unscheduled permanent disabilities is simply for the law to state what the weekly benefit shall be. This is exactly what the General Assembly did in the 1970 amendment. It provided a maximum benefit for temporary disability of 66 2/3 per cent of the employee's average weekly earnings, but not more than a weekly benefit amount, rounded to the nearest dollar, equal to 46 per cent of the state average weekly wage paid employees as determined by the Iowa Employment Security Commission for unemployment compensation and

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55 *Id.* §§ 85.31, .42.
56 *Id.* § 85.28.
57 *Id.* § 85.33.
58 IOWA CODE § 85.37 (1966).
59 IOWA CODE § 85.34(2) (1971).
60 *Id.* § 85.34(2a-r, t).
61 *Id.* § 85.34(3).
62 IOWA CODE §§ 85.34(2)-(3) (1966).
63 *Id.* §§ 85.34(2) (3rd par.), 85.34(3) (2nd par.). These unnecessary provisions were not repealed.
64 IOWA CODE § 85.34(2) (1962).

in effect at the time of the injury.[65] In cases where the employee receives personal injury resulting in death, the same maximum weekly benefit is payable.[66] In cases where an employee receives an injury causing temporary disability or causing a permanent partial disability for which compensation is payable during a healing period,[67] weekly compensation shall not exceed an amount, rounded to the nearest dollar, equal to 50 per cent of the state average weekly wage paid to employees as determined by the Iowa Employment Security Commission, not exceeding 66 2/3 per cent per week of the employee's average weekly earnings.[68] In all cases—death, temporary disability, and permanent disability—the minimum compensation payable is still $18.00 per week unless the employe was earning less than $18.00 per week, in which event the compensation payable is a sum equal to the full amount of the weekly earnings.[69]

The so-called "family plan," whereby benefits were payable for temporary disability and a healing period where there is permanent disability, is no longer in effect, and the employee's weekly compensation is geared solely to his earnings.

Based upon the computations furnished by the Iowa Employment Security Commission, the maximum weekly benefits payable for the fiscal year beginning July 1, 1971, are based upon an average weekly wage in the state of $128.69 per week, which supports a compensation payment of $64.00 per week for temporary disability and healing period, and $59.00 per week for permanent disabilities and death.[70]

Lawyers should know that there has been no change in the manner of determining the maximum healing period allowable in cases of permanent partial disabilities.[71] The healing period shall not be more than 30 per cent of the period during which weekly compensation is paid, although an additional healing period not exceeding 30 per cent may be ordered by the industrial commissioner upon application of the claimant. In no event shall payments for the healing period be longer than the actual time the employee is incapacitated from work because of the injury. It must now be kept in mind that the maximum weekly compensation for all benefits will probably vary from year to year inasmuch as the state average weekly wage will probably not remain constant. As soon as the employment security commission has determined the average weekly wage each year, the industrial commissioner will announce it immediately so that all interested persons will know the benefit level applicable the coming year.

In line with the increasing interest in rehabilitation by both management

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65 IOWA CODE §§ 85.34(2), 96.3 (1971).
66 *Id.* § 85.31.
67 *Id.* § 85.34(1).
68 *Id.* § 85.37.
69 *Id.* §§ 85.31, 85.34(2)-(3), 85.37.
70 *Id.* §§ 85.37, 85.34(2), 85.31(1).
71 *Id.* § 85.34(1) (1971).

and labor, the General Assembly added a new benefit provision as incentive for an injured employee to seek retraining in a new occupation when he is unable to return to his old one.[72] This new section provides that an employee who has sustained an injury resulting in permanent partial or permanent total disability for which compensation is payable under the Act and who cannot return to gainful employment because of such disability, shall upon application to and approval by the industrial commissioner be entitled to a $20.00 weekly payment from the employer in addition to any other benefit payments during each full week in which he is actively participating in a vocational rehabilitation program recognized by the state board for vocational education. Such additional benefit payments shall be paid for a period not to exceed thirteen consecutive weeks except that the commissioner may extend the period for an additional thirteen weeks if the continued training will accomplish rehabilitation. Any decision of the industrial commissioner about approving or disapproving an application for such additional payments may be taken to the district court as prescribed for the appeal of other decisions.[73]

It should be noted that there has been no change in the manner in which weekly compensation is determined under the 300-day rule.[74] The only problem in establishisg the compensation rate for one entitled to workmen's compensation under the Iowa Act is to determine the daily rate of pay. If the injured worker has been employed for more than one year, or if he is earning less than the average wage in that particular type of employment or is a part-time worker, then he shall be compensated on the basis of the average earnings (as computd under the 300-day rule above set out) of a day laborer in that locality for the type of business he was in when injured.[75]

Earnings are based on earnings for the number of hours commonly regarded as a day's work for that employment and exclude pay for overtime or special expenses, but include tips and bonuses.[76] All rates are subject to the statutory maximums and minimums. The date of injury determines the applicable benefits schedule, *i.e.*, weekly benefits granted by the Sixty-Third General Assembly will be paid only for injuries occurring after July 1, 1970, and are not retroactive.[77]

III. Administration

In the nature of administrative improvements, the General Assembly authorized the industrial commissioner to gather and publish statistical reports,[78] to order depositions[79] and to approve commutations.[80] To clear up an ambi-

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72 *Id.* § 85.70.
73 *Id.* §§ 85.26, 85.70.
74 *Id.* § 85.36.
75 *Id.* § 85.36(4)-(5).
76 *Id.* § 85.36(7).
77 *Id.* §§ 85.34(2)-(3), 85.31.
78 *Id.* § 86.8(3).
79 *Id.* § 86.21.
80 *Id.* §§ 85.45-.46. The district court formerly approved commutations. Iowa Code § 85.45 (1966).

biguity the Act was also amended to delete a provision that the industrial commissioner act as chairman of an arbitration board.[81] The law also had provided that an arbitration hearing be held before either a deputy commissioner as a sole arbitrator or before a board of arbitration composed of a deputy commissioner as chairman and two other arbitrators, one appointed by each of the two parties.[82] Inasmuch as the industrial commissioner has the sole responsibility for reviewing arbitration decisions of the deputy as sole arbitrator or a board of arbitration,[83] it seems more fair that he not sit on the arbitration board. Furthermore, there are so many arbitration and review hearings each year that it would greatly hamper the scheduling of cases if the commissioner had to be prepared for possible participation on an arbitration board in various parts of the state. Arbitration hearings must be held in the county where the alleged employment injury occurred unless the parties stipulate to another hearing place.[84] If the injury occurred outside the state, the hearing also has to be held in the county closest to the place of injury.[85]

As a practical matter, in only a few cases has an arbitration board been demanded.[86] Conducting the hearings and filing a decision reflecting the viewpoints of all arbitrators caused considerable delay and confusion. However, it is foreseeable that if the industrial commissioner and his deputies consistently filed decisions either too conservative or too liberal, parties might seek an arbitration board so that they would have a dissenting decision to file.

Of particular interest to the Bar is a new provision that the industrial commissioner and his deputies must be lawyers licensed to practice law in Iowa.[87] Since 1962, only lawyers have been appointed as deputy industrial commissioners. The work of admisistering the workmen's compensation law requires the industrial commissioner to conduct hundreds of hearings each year and pre-hearing conferences. The hearings are held in courtrooms around the state and are conducted substantially as non-jury trials in the district court. As a rule, the parties are represented by lawyers. Because the work involves the performance of legal and quasi-judicial duties by the commissioner and his deputies, a license to practice law in Iowa should be, and now is, a minimum requirement.

There also was a change in laying venue of appeals from the commissioner or deputy commissioner to the district court.[88] Before, the Act provided that any party aggrieved by any decision or order of the industrial commissioner in a proceeding on review of an arbitration decision could appeal in thirty days to the district court of the county in which the injury occurred.[89]

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81 IOWA CODE § 86.8(3) (1966).
82 *Id.* § 86.15.
83 IOWA CODE § 86.24 (1971).
84 *Id.* § 86.17.
85 *Id.*
86 An arbitration board has been demanded in two cases in the past ten years and used in one.
87 IOWA CODE §§ 86.1-.2 (1971).
88 *Id.* § 86.26.
89 IOWA CODE § 86.26 (1966).

Any party aggrieved by any decision or order of the industrial commissioner or a deputy commissioner on review of an award or settlement could also appeal to the district court of the county in which the injury occurred and in the same manner as provided in section 86.26.[90]

The provision relating to the appeal of the commissioner's review of the deputy's arbitration decision was amended by the new Act to provide that appeal is now directed to the district court of the county in which the arbitration hearing was actually held.[91] In many cases the parties would stipulate that the hearing be held for their convenience in some place other than the county in which the injury occurred.[92] This was particularly true of litigation over accidents that occurred outside Iowa, particularly, accidents involving truck drivers who resided in and worked out of Iowa. Thus, a Des Moines truck driver who was subject to the Iowa law because he had been hired in Iowa but was injured in Kansas City, Kansas, would be entitled to the jurisdiction of the Iowa law.[93] If he had returned to Des Moines after his injury, been treated there, and retained a Des Moines lawyer, he probably would prefer to have his hearing in Des Moines instead of Bedford, the seat of Taylor County, the county closest to Kansas City. Under the former law, even if the parties had stipulated to a Des Moines hearing, the proper venue for appeal would lie in Taylor County and failure to file there was fatal.[94] Of course, any appeal still has to be taken within 30 days from the decision or the right is lost.[95]

If the parties prefer to stipulate to another county for a hearing before a deputy industrial commissioner, the chances are they prefer to present any appeal to the district court serving that same county. Thus, a provision that the appeal shall be to the district court in the county where the hearing was held probably is more convenient for all the parties and prevents confusion, hardship and embarassment about the proper venue.

The provision relating to the appeal to the district court of a review-reopening decision was not amended.[96] Appeal is to be taken in the same manner as provided for a commissioner's review of a deputy's arbitration decision, so there should be no question that such appeals also are to the district court of the county of trial.[97]

In amending the provision authorizing the commissioner rather than the district court to order the taking of depositions, the General Assembly inadvertantly repealed the important paragraph which provided: "Such depositions

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90 IOWA CODE §§ 86.26, .34 (1971).
91 *Id.* § 86.26.
92 *Id.* § 86.17.
93 Haverly v. Union Constr. Co., 236 Iowa 278, 18 N.W.2d 629 (1945); Cullamore v. Groneweg & Schoentgen Co., 219 Iowa 200, 257 N.W. 561 (1934); Pierce v. Bekins Van & Storage Co., 185 Iowa 1346, 172 N.W. 191 (1919).
94 Minnesota Valley Canning Co. v. Rehnblom, 242 Iowa 1112, 49 N.W.2d 553 (1951).
95 IOWA CODE § 86.26 (1971).
96 *Id.* § 86.34.
97 *Id.* § 86.26.

shall be taken in the same manner as provided for the taking of depositions for use in the district court, and when so taken shall be admissible in evidence in such hearings in the same manner, subject to the same rules governing the admission of evidence as in the district court."[98] Questions have been raised already about the procedures to be followed for securing depositions and the General Assembly should restore the above-quoted provision. However, the absence of the Code provision probably is not fatal to the taking of depositions in view of the industrial commissioner's rule dealing with depositions: "Any party to a proceeding under the workmen's compensation Act may take the testimony of any person, including a party, by depositon upon oral examination or written interrogatories, for the purpose of discovery or for use as evidence in the proceeding, or for both purposes."[99]

Last and least, the industrial commissioner is authorized to have an official seal.[100]

IV. The Need for Continued Progress

There were some disappointments in the new law. The following provisions were not enacted:

1. A provision giving benefits for life instead of only 500 weeks to permanently and totally disabled workers.
2. A provision for the payment of benefits to dependent children of a deceased employee to age nineteen instead of age sixteen.
3. A provision that the industrial commissioners have authority to supervise medical care and rehabilitation.
4. A provison authorizing an employee and employer to enter into a compromise settlement under the supervision of the industrial commissioner when the liability was doubtful.

Hopefully, the General Assembly will consider these matters favorably in the future. Also of top priority are establishing a workmen's compensation court with the authority to supervise claims, which would provide the flexibility of using the rules of civil procedure, and establishing a broad second injury fund which, in cases where an employee with a handicap has been hired and later suffered a work injury resulting in a disability greater than from the work injury alone, would take over payments after a certain period.

In December, 1969, the President signed the Federal Coal Mine Health and Safety Bill, which provides for workmen's compensation payments for coal miners killed or disabled by pneumoconiosis.[101] Such payments are to be made by the Social Security Administration. This was the first time that federal workmen's compensation was applied to workers in a private industry. The Secretary of Labor has proposed rules which all states having coal mining must

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98 Iowa Code § 86.21 (2nd par.) (1966).
99 1966 I.D.R. 326.
100 Iowa Code § 86.8(6) (1971).
101 30 U.S.C. §§ 801-936 (1971).

meet.[102] This includes Iowa. If on January 1, 1973, a state law does not meet the requirements of the Secretary of Labor, employers must insure for the federal benefits. This represents a significant entry of the federal government into state workmen's compensation since it is doubtful that all twenty-six coal mining states subject to the new Act will amend their laws to meet federal standards. Also, under the new Federal Health and Safety Act,[103] a study will be made by a fifteen-member commission into the adequacy of state workmen's compensation laws. One can foresee that after the commission's recommendations are filed on July 30, 1972, there will be areas of inadequate coverage, benefits and administration which some congressmen will feel can only be remedied by a federal act.

By far the worst threat in workmen's compensation as far as lawyers are concerned is the proposed expansion of social security. With Congress carefully scrutinizing state compensation activity it is essential that state legislative bodies within the next year show that they are responsive to the needs of workmen. Otherwise, a federal workmen's compensation act is a clear possibility and all of the amendments described herein will have been for naught.

V. Summary

The Iowa Workmen's Compensation Act was greatly improved by the major amendments passed by the Iowa General Assembly in 1970. It made the law compulsory for both employers and employees, increased weekly benefits for temporary and permanent disability and death, provided that weekly benefits be based on the average wage in the state as determined by the employment security commission, allowed an additional weekly benefit for employees pursuing an approved rehabilitation program, authorized the industrial commissioner to check for insurance coverage, gather and publish statistical reports, order depositions, and approve commutations. The amendments represent a great improvement and, hopefully, set the mood for the General Assembly to continue progress in this important field.

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[102] 30 C.F.R. §§ 70-80 (1971).
[103] Pub. L. No. 596 (Dec. 29, 1970).

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