

Fixing Workers Comp

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From his perch on the monkeyboard in the derrick, he leaned out to grab a drill pipe and missed. His safety harness was too big. It wrapped around his neck and asphyxiated him.

The death of Dean Harris, 48, left a gaping hole for the extended family he'd supported on the Wind River Indian Reservation.

Riverton attorney John Vincent explained that if Harris had died on a rig drilling on a tribal lease, the family might have been able to file a wrongful death suit and possibly recover some compensation for the loss.

Because it was not on a tribal lease, the case fell within the state's jurisdiction, where companies are immune to such damages.

The fall-out from Harris' death was wide-ranging. His mother was forced to move in with other family in Montana. The niece and nephew he helped support sank further into poverty.

"Everything just sort of fell apart," said Harris' sister, Kathleen Brannan. "I would like to have some compensation for my mother so she could have her own home. She'd like to move back. But nobody took responsibility."

Since 1986, Vincent, who also serves as Riverton's mayor, has documented a profound change in legal recourse available to workers and their families depending upon whether an accident occurred on tribal lands or on state, federal and private leases in the state's jurisdiction.

If an accident or injury occurs on a tribal lease, and the employer can be proven negligent to some degree, the worker or his family may bring a lawsuit to seek damages. But it's extremely difficult to seek damages under the state's jurisdiction where an employer enjoys immunity.

"One's ability to have a family or be compensated when a worker is killed or suffers a serious, life-long injury depends on whether they were working on a tribal lease," said Vincent. "We're proud of our blue-collar community here in Riverton. But the status of the (state) law is shameful to me."

THE LAW

Vincent is asking legislators to launch an interim study to consider whether lawmakers should reinstate the "joint and several liability" statutes, which were repealed in 1986. "Joint and several liability" refers to legal tools used to assign degrees of liability in workplace deaths and injuries.

Vincent and attorney Jessica Rutzick authored an article on the subject that is slated for

publication in the Wyoming Law Review next month.

Vincent said those laws were evenly applied in state and tribal jurisdictions until 1986, when the state repealed them from its statutes. Tribes did not follow the state's lead, and maintained the joint and several liability statutes.

Joe Teig, a partner with the Holland and Hart law firm, said Wyoming's lawmakers repealed the joint and several liability statutes because they agreed that it is not fair make a party pay 100 percent of damages if they are only partially to blame for the accident.

"Prior to 1986, if one defendant could be found in any amount of fault, they could be forced to pay all of the damages. Then they'd have to sue all the other parties (who shared some degree of fault) to get back the share they didn't cause," said Teig.

What's not fair, argues Vincent, is that under the state's current system the risk of loss is placed on the innocent party (an injured worker) instead of the responsible party (a negligent employer).

"Who should have the risk of not recovering their full compensation?" said Vincent. "The wrong-doer, or the injured worker?"

Vincent said that many big oil and gas producers avoid paying into Wyoming Workers Compensation program by contracting with drilling companies that do pay into the system. Because the contractor enjoys legal immunity and still may be responsible for only a portion of the fault of the accident, courts rarely allow an injured worker to seek full damages from the other parties.

That's the result of the joint and several liabilities repeal, according to Vincent.

"Big oil wants to point fingers at a whole bunch of different people to diffuse liability, knowing none of them have the insurance to pay and knowing they'll never be made to pay," said Vincent.

Vincent said if weren't for the joint and several liability hitch preventing workers from seeking damages, they might be able to go after those "big oil" corporations that have more financial wherewithal than the small drilling contractors they employ.

Oil and gas activity on tribal lands seems to keep pace with the rest of the state despite the different levels of liability a producer is exposed to, said Vincent.

KEEPING THE BARGAIN

Under state law, companies that pay into the state's Workers' Compensation program are immune to monetary damages from injured employees and their families - even if the employer is found to be grossly negligent.

It's part of the deal struck almost 90 years ago between workers and employers. If a company pays into the Workers' Compensation program, the program is supposed to cover medical care

and lost wages for injured employees.

In return, companies cannot be sued for the same expenses -- no matter who is at fault for an accident.

Wyoming Mining Association executive director Marion Loomis is familiar with employer and employee liability issues in Wyoming. He said a repeal of the joint and several liability statutes would break the bargain struck over Workers Compensation.

"If industries and people paying into (Workers Compensation) are going to lose immunity, then maybe they ought to allow us to opt out of Workers Compensation and get our own insurance," said Loomis. "Then maybe we ought to get rid of the (Workers Compensation) benefits, too."

At the root of the problem is the Wyoming Workers' Compensation program, said Teig.

"By statute, (Wyoming workers) gave up their right to sue their employer. In return, they're supposed to get benefits no matter who caused (an accident)," said Teig. "But that only works if people are truly compensated."

Teig said perhaps a better endeavor for the legislature would be to make sure Workers' Compensation more effectively delivers the benefits that injured employees and their families need.

Wyoming Workers' Compensation director Gary Child said the notion that the program is inadequate toward workers' needs is "a matter of perspective."

"I'm aware there's a lot of misinformation out there," Child told the Star-Tribune. "I believe Wyoming Workers' Compensation is providing those services within its statutory guidelines."

Dean Harris' family received \$10,000 for his burial costs, and a letter of condolence from the governor. Brannan said there's not enough money to bring her mother back to Riverton where the family has endured much hardship since Harris' death.

"My son is having a hard time," said Brannan. "He's 30, and he talked to me about going to work on the rigs. I said, 'No.'"

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