Peter Rousmaniere---October 14, 2015

ERISA plans are secret and the opt-out lobby in Texas resists efforts to make them public, such as through mandatory filing. For the first time since I started to write on opt-out I can report on the financial impact to injured workers by opt-out vs workers' comp. What follows is a partial analysis leading to the following findings: At low or average wages opt-out is equal to or greatly less than workers comp depending on the wage replacement formula. For high wage earners, opt-out ERISA plans appear almost designed to discourage claiming. The secrecy of ERISA plans perpetuates this pattern.

I did a quick analysis of the wage replacement benefits under a typical opt out ERISA plan. A typical benefit formula is 85% of gross wages, taxable. A sizable minority of plans state 70%. Most have maximum weekly benefits, and they are typically $572 a week.

To compare these benefits with workers' comp benefits in Texas I drew upon my personal database for WC benefit analysis (which includes tax calculations and household budget estimates). WC indemnity benefits in Texas are 70% of gross income, tax free, with a current weekly benefit cap of $895.

An opt-out injured worker paid at the median wage of Texas would receive wage replacement that is about the same as she would have received under workers comp, assuming a 85% formula.

Some plans use 70% of wages. In such case, she would receive about 15% less than under workers comp. Compared to her uninjured after tax take-home pay, that is about $600 less per month or a reduction of 25%. A shortfall of over 15% is a warning sign, nationally.

This 70% rate sports a red flag for financial distress. If she is partnered with another median wage uninjured worker and with a child in the household, and they live in Houston, the couple's take home income would be about at about the basic household expense budget estimated for that city, which budget does not include provisions for savings. Thus household has no financial cushion, even assuming prudent household practices.

The Texas annual wage for a median wage job is about $28,600. For any worker earning annually above about $45,000, the $572/week wage cap (very low compared to workers' comp weekly caps nationally) begins to cut into wage replacement when replacement is at 85% of wages, taxable. This means that as the wage of the worker rises above $45,000, wage replacement stops rising. Take a craftsperson who with overtime makes $60,000 a year. Her monthly injury wage replacement would be 28% less (close to $1000 less) than take home without injury and about 25% less than under workers' comp.

--- Peter Rousmaniere