Evaluating the Implementation of the Presumption Law at Hanford

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Executive Summary

Located in Southeastern Washington, the Hanford nuclear site was built by the federal government in 1943 to manufacture plutonium for atomic bombs, which would later be used during World War II. Production continued until 1990 when the site transitioned to clean up; a process still continuing to this day. Nearly thirty years later, cleanup is nowhere near completed, and Hanford remains one of the most contaminated worksites in the world. Every day, Hanford workers are in danger of exposure to toxic radioactive chemicals.

The Hanford Presumption Law of 2018 helped lift the burden on Hanford workers applying for workers’ compensation. The law presumes that certain respiratory diseases, cancers, and neurodegenerative disorders for Hanford workers hours were caused by toxic exposures related to working at the Hanford nuclear site.

Our purpose was to evaluate the effectiveness of the Hanford Presumption Law regarding whether the law eased the burden of proof of causation placed on workers and the number of workers’ compensation claims filed, approved, and denied. Our methods included 1) conducting a literature review, 2) examining a public records request from Washington State Labor & Industries (L&I), 3) interviewing former Hanford workers and their spouses, 4) interviewing Hanford union representatives, and 5) communicating with a representative from Washington State L&I.

We found that a coalition of Hanford workers, their families, Hanford unions, the advocacy agency Hanford Challenge, and state lawmakers developed the law based on a similar presumption clause in the 1997 Firefighters Bill (a Washington State law), which attempted to rectify systemic barriers that workers at Hanford faced filing for workers’ compensation. The law passed and went into effect in June 2018, but in December of 2018, the federal government (United States Department of Justice (DOJ) and the Department of Energy (DOE)) filed a complaint against the state of Washington, claiming that the presumption law violated the Supremacy Clause of the U.S. Constitution. In March of 2019, both the federal government and the state of Washington filed motions for summary judgment in the Eastern Washington U.S. District Court.

One successful collaboration between Hanford workers, Hanford unions, Washington State Senators Patty Murray and Maria Cantwell, and DOE was securing funding for the Hanford Workforce Engagement Center (HWEC). The HWEC helps Hanford workers and their families with occupational health concerns, including assistance with the workers’ compensation process.

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1 Department of Energy, “Performance Management Plan for the Accelerated Cleanup of the Hanford Site.”
2 “Chemical Vapor Exposures.”
3 Nick Bumpaous, Personal communication.
4 “Hanford Workers Engagement Center.”
We also found that while the long-term effect of the lawsuit remains to be seen, the presumption law faces some clear challenges and obstacles. Since June 2018, 131 workers have filed for compensation under the presumption law; 60 of these claims have been approved, 20 have been denied, and 51 are still processing. Significant barriers to the workers’ compensation process persist after the passage of the law. Penser North America, Inc. (Penser), the DOE’s third-party administrator, continues to provide administrative, bureaucratic, and financial impediments to workers filing their claims. Many eligible workers have self-selected out of the workers’ compensation system and have not re-filed their claims.

In order to address these lingering barriers to workers’ compensation, we believe the state and federal government need to implement a few changes. First, Penser claims managers should follow the law by only requiring that workers provide proof that they worked at Hanford in one of the designated sites for at least 8 hours and that they have one of the covered diseases. Second, L&I has the power to enforce state law for self-insured employers using the state insurance program and as such they should hold Penser accountable when they fail to comply with the Presumption Law. Potential avenues for enforcing the law include education about the law and penalty for continued non-compliance. Third, L&I should record the number of claims Penser requested be denied that they overturned (and allowed) in order to track progress. They should also track reasons for claims denied. Finally, permanent funding should be secured for the HWEC to continue their work assisting Hanford workers and their families with workers’ compensation claims and with other occupational health concerns. These recommendations would provide improved structural conditions for Hanford workers to meet their healthcare needs.

Hanford Workers’ Compensation Timeline

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5 Tim Church, Personal Communication.
6 Anonymous, Personal communication with a Hanford worker.
Brief description of the Organization

The Hanford Challenge is a non-profit whose mission is to create a future for the Hanford nuclear site that secures human health and safety, advances accountability, and promotes a sustainable environmental legacy. The Hanford Challenge works with many key stakeholders including state and local government officials, workers’ unions, workers, and the public. Hanford Challenge played a key role in the development of the June 2018 Hanford Presumption Law reducing the burden of proof for Hanford workers to compensation, and they continue to monitor implementation and challenges since the law’s passage.  

Background

History of the Hanford nuclear site

Established in 1943, the Hanford nuclear site was the first large-scale producer of plutonium, a fissionable radioactive isotope used in nuclear weapons. The site produced plutonium for the bomb dropped over Nagasaki that marked the end of the second World War. The ensuing “Cold War” ushered in a dramatic increase in the production of atomic weapons at Hanford, where the project expanded to include nine nuclear reactors and five chemical reprocessing facilities. During this period, Hanford produced plutonium for up to an estimated 60,000 nuclear weapons built to stockpile the U.S. nuclear arsenal. The massive scope of the Hanford project required a large labor force, and the Hanford site employed hundreds of thousands of workers over the years.

Beginning in 1989, Hanford’s mission shifted to cleaning up the site after decades of producing nuclear weapons. After ceasing operations in the 1980s, the Hanford Site became the biggest environmental cleanup job in U.S. history. Under the Tri-Party agreement, the Department of Energy (DOE), Environmental Protection Agency (EPA) and the State of Washington agreed to targets for cleaning the nuclear site and removing waste. Producing plutonium generated massive quantities of dangerous and corrosive nuclear waste, most of which was stored in 177 underground tanks. These tanks are still in use today and contain tens of millions of gallons of radioactive material -- two-thirds of the Nation's High-Level Nuclear Waste. While the cleanup was originally projected to take 30 years, the most recent Hanford Lifecycle Scope, Schedule and Cost report estimated the cleanup to be completed in 2079 and cost over $300 billion in its best-case scenario.

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7 Hanford Challenge, “Our Mission.”
8 “Hanford History.”
9 “SCIENCE WATCH; Growing Nuclear Arsenal.”
10 Gephart, “A Short History of Hanford.”
11 “Tri-Party Agreement - Hanford Site.”
13 “Hanford Cleanup - Washington State Department of Ecology.”
History of Workers’ Compensation at Hanford

In 1954, the DOE made an agreement with the State of Washington to utilize the Washington State Department of Labor & Industries’ (L&I) industrial insurance program for self-insured employers.\(^\text{16}\) In doing so, the DOE and Washington State L&I have a Memorandum of Understanding (MOU), which states that the DOE and its contractors are covered under the L&I self-insurance program. In the MOU with Washington State L&I, the DOE agreed to pay the workers’ compensation claims for subcontracted Hanford workers. The DOE hired a third-party administrator, previously Contract Claims Service, Inc. (CCSI) and now Penser North America Inc. (Penser), to process these claims. Penser, the current third-party administrator, processes claims, submits recommendations to L&I for allowance or denial, pays bills under allowed claims, and pays time loss or wage loss benefits.\(^\text{17}\) Additionally, per the MOU, L&I oversees the claims process, ensures compliance with laws, and makes the final decision whether a claim is approved or denied.\(^\text{18}\) However, L&I is limited in its ability to take actions against self-insured employers or third-party administrators; indeed L&I can only act if there is evidence of severe mismanagement or makes certain violations (stipulated in RCW 51.14.080 and RCW 51.14.095).\(^\text{19}\)

Barriers to workers’ safety at Hanford

Workplace hazards

While many Americans lent their hand to the national defense program at Hanford, there was often little oversight and attention to their safety. Hanford generated millions of tons of radioactive and chemical contaminants, many of them dangerous in microscopic quantities and poorly understood from a health perspective.\(^\text{20}\) The national security mission made health and safety a backseat concern. Tens of thousands of workers were exposed to a vast array of highly toxic and radioactive materials, often with zero monitoring or documentation. When Hanford halted its production of plutonium and shifted to its cleanup effort, workers’ exposure to dangerous chemicals persisted.

The cleanup effort started in 1989, involved a large workforce that included electricians, laboratory technicians, maintenance staff, industrial hygienists, engineers, managers, construction workers, laborers, and other specialists. The Hanford cleanup obligated people to work with over 2,710 different waste disposal sites and burial grounds, 500 contaminated facilities that have been or are being demolished or remediated, 55 million gallons of high-level radioactive and chemical waste, and 270 billion gallons of groundwater contaminated by

\(^{16}\) Nick Bumpaous, Personal communication.
\(^{17}\) Starla Treznoski, Personal Communication.
\(^{18}\) Miller & Miller, “Review of the Workers’ Compensation Program at the Hanford Site.”
\(^{19}\) Miller & Miller.
chemicals and radioactive isotopes. In this hazardous environment, workers continued to be exposed to a variety of known cancer-causing, disease-inducing substances. The negative health consequences of these exposures were often difficult to assess, given the long latency period from the time of exposure to many of these illnesses. When Hanford workers become ill or injured on the job, most of them relied on Hanford’s workers’ compensation program to get medical care. However, instead of getting medical care, many workers were forced to navigate a convoluted workers’ compensation program that set them up for failure. While workers often sacrificed their own personal health in the name of national security, the federal government has demonstrated a lack of commitment to protecting these same workers when the inevitable hazardous exposures occur.

In 2000, Dr. David Michaels, the Assistant Secretary for Environment, Safety, and Health for the DOE held a public hearing in Richland, Washington that gave workers one of the first opportunities to air their health and safety stories at Hanford. This marked a critical moment in Hanford’s history, where workers shared how the site had made them sick without being dismissed as unpatriotic. Their astonishing stories highlight how the workers’ compensation program failed to help them, and the negligence of the DOE. One such story -- that of Charles Moore a Hanford worker for over 50 years -- demonstrated the consequences of working at such a contaminated site: “my uncle worked at the T-plant. He died of cancer. My foreman died of cancer. My mother, who worked at Hanford, died at the age of 42 of cancer. My father died of emphysema, which I believe was because of his exposure to radiation. I've worked in areas where the people--I can't find one of them alive today--they're all dying of cancer.” Moore paints a horrifying picture of workers' health, and when he was unable to work because of his damaged lungs, he was promptly fired for “lack of production.” Moore’s story emphasized Hanford’s shocking disregard for workers safety, but his story was far from unique.

Thad Coleman, who worked most of his life at Hanford, had recently had surgery on his throat, been diagnosed with cancer of the pancreas, and been diagnosed with asbestosis in his lungs at the time of the meeting. He communicated some of the financial consequences of being denied any medical compensations and the dire situation it had left him in: "I don't want to be the richest man in a graveyard, I'll have to say that. I'm not out to sue. But they say the only thing they can do with me is a lung transplant. Any of you guys out there got a lung? Well, I need one." Coleman expressed the difficulty of surviving financially with no rightful compensation from the DOE, a sentiment mirrored by Kay Sutherland, a Richmond native who lost four of her five family members to diseases. Sutherland witnessed how a toxic exposure can cut down workers’ career: “the people in this area have been forced into poverty because they retire in their 30s, 40s, and 50s, too young to get a retirement, too young to get Social Security. They fall through the cracks, and they die.” These meetings were an extraordinary call to action for Hanford and the DOE to rethink how to treat their workers and improve their worker’s compensation program. Unfortunately, many of the same grievances on insufficient access to workers’ compensation continue to this day.

21 “Hanford History.”
Flawed workers’ compensation program

Despite their work in the most contaminated area in the Western Hemisphere, Hanford workers are still routinely denied any form of workers’ compensation. Hanford workers, some of which had worked for more than 20 years as cleanup workers in the tank farms, have been systematically denied workers’ compensation claims at twice the rate of workers at other Washington self-insured employers.24

Advocacy organizations, such as Hanford Challenge and local newspapers, have highlighted worker stories about complex procedures and various hoops workers had to navigate in order to get their workers’ compensation claims through the administrative process. Even Washington State Labor & Industries (L&I) and The U.S. DOE Office of Inspector General conducted separate investigations into the Hanford workers’ compensation process. The 2006 investigation contracted by Washington State L&I found that the third-party administrator (CCSI) could be more effective and timelier in communication with workers and processing of claims.25 In 2018, the Office of Inspector General found that Penser: 1) sent incomplete claims documentation packages to L&I, 2) had major billing and payment discrepancies involving pension benefits costs, 3) made questionable charges for payments for protection against financial loss without basis, and 4) inadequately communicated and failed to build trust with workers.26

Further, the DOE and its third-party administrator continue to employ several tactics to discourage and limit workers’ compensation benefits. These tactics include forced visits to medical professionals and aggressive legal tactics, among other opportunities for DOE interference in workers’ compensation claims.

To diminish workers’ claims, the DOE and its third-party contractor required workers to go to independent medical exams that violate state standards.27 Ideally, Independent Medical Exams (IME) are used by claims administrators to be better informed on a worker’s health condition and determine what might have caused their condition. However, more often, IME’s were used to cherry pick diagnoses used to minimize impairment ratings and decrease the odds of a claim being approved. We learned this first hand talking with Abe Garza, a Hanford worker who has nerve damage on his hands and feet and has been diagnosed with toxic encephalopathy caused by exposure to chemicals. Garza and his wife Bertolla Bugarin believe his illness was caused by exposure to chemical at Hanford but his claims have been routinely denied by Washington State L&I. Bugarin recalled how she was forced to drive to various doctor’s appointments from Seattle and Spokane with little notice, and how these same doctors often did not have all of the pertinent information on her husband’s disease to make a medical diagnosis. Bugarin expressed that the DOE and third-party administrator would send incomplete medical records to doctors in order to get a favorable diagnosis. It is clear that IME’s are not truly independent assessments given that the Examiners are hired by the DOE. Further, IME’s have

25 Miller & Miller, “Review of the Workers’ Compensation Program at the Hanford Site.”
26 “Audit Report: Management of the Workers’ Compensation Program at the Hanford Site.”
been used unfairly to place a burden upon the worker given that they are legally obligated to attend. In the case of Abe Garza, he was lucky his wife could find time to attend these examinations, even though ultimately these were used to discredit his workers’ compensation claim.

Hanford workers’ compensation is fraught with many more opportunities for DOE interference. Under the previous program, workers who contested the denial of their claims were often met with aggressive DOE legal tactics that created an uneven playing field. We spoke with Lonnie Rouse, who worked at Hanford for most of his life and suffers from toxic encephalopathy (occupational dementia). He fought the DOE and its contractor that manages worker compensation claims for 10 years and has faced many of the legal tactics by the DOE to discredit him. He recalls how DOE and their lawyers try to discredit him: “they say it didn’t happen out there, that I’m a liar.” While contractors’ legal costs are paid by DOE, workers who file for workers’ compensation are forced to finance their own attorneys even if their claims are ultimately accepted. The DOE has spent millions of dollars fighting Hanford claims; a report concluded that DOE reimbursed contractors over $300 million in litigation costs from 1998-2003.  

Financing aggressive litigation against workers’ and IMA’s are two tactics that emerged through interviews with workers currently fighting for workers’ compensation but are only a small selection of the ways the DOE and their third-party contractor try to influence and diminish worker’s compensation claims.

The systemic suppression of workers’ compensation claims has had very real consequences. Hanford workers are denied at two times the rate of other self-insured employers in the state. The unfair burden placed on workers to prove their illnesses were caused by chemical exposure was insurmountable for many, due in part to many of these chemicals not even being monitored on the Hanford site. It is in this hostile environment that advocacy groups such as Hanford Challenge and Unions like the United Association of Plumbers and Pipefitters stepped in to work towards a viable solution.

Establishment of the Presumption Law

Coalition-Building

During our interview with union representatives, we found that after years of fighting with DOE and Penser about the workers’ compensation for exposures and a string of approximately 60 toxic chemical exposures in a few months during Spring of 2016, Hanford workers, their families, representatives from the Plumbers and Steamfitters Local Union 598, and Hanford Challenge decided to act. Together they built a coalition and drafted a new workers’ compensation law to reduce the burden of proof for Hanford workers.

28 “DOE Reimbursement of Contractor Litigation Costs.”
30 Nick Bumpaous, Personal communication.
During the law-development process they reached out to and received support from US Senators Patty Murray and Maria Cantwell, Washington Governor Jay Inslee, Washington State Attorney General Bob Ferguson, and others. Senators Murray and Cantwell were particularly instrumental prioritizing the creation of the Hanford Workforce Engagement Center to assist Hanford workers through the workers’ compensation process.31

Law Development

We also found that the coalition based their arguments for the law on the 1997 Firefighters Bill, which included a presumption of occupational disease that assumes a connection between exposures on the job and illness.32 Further, the law passed because in doing their job, firefighters are unaware of the hazards they are exposed to. Regarding Hanford, even the DOE is unaware of all the hazards workers are exposed to daily. The goal in creating the law was to make the claims process easier for workers.

The goal of the Hanford Presumption Law was to significantly reduce the burden put on workers exposed to toxic chemicals to receive compensation for their illnesses. The law established the assumption that exposure to chemicals present at the Hanford site causes certain illnesses, including heart problems, beryllium-related diseases, neurological and respiratory diseases, as well as various types of cancers.33 Further, the law only requires that workers show 1) they worked at Hanford in one of the specified areas, 2) they worked there for at least 8 hours, and 3) they are suffering from one of the listed conditions.34 The law required only 8 hours on site because even if you only go out to the site briefly, you are still in danger of experiencing an AOP15 event (when gas is emitted from house-sized tanks).35 Normally these events occur when transferring contents from one tank to another, but it can even happen with atmospheric changes (e.g., changing from 100 degrees during the day to 50 degrees at night); fume clouds blow across the site outside the tank farms depending on the wind.

Furthermore, the law shifted the burden from the worker to the DOE and it’s third-party administrator to prove with ‘clear and convincing evidence’ that the worker’s illness was not caused by exposure to toxic chemicals at Hanford.36 For example, if a worker filed a claim for lung disease, but smoked for 20 years, the claim could be denied because smoking is a plausible explanation for lung disease.

Notably, the union representatives told us the DOE did not comment on the law during its development. The Hanford Presumption Law was drafted and finally passed through the Washington state legislature in June 2018.37

31 Anonymous, Personal communication with Hanford worker.
32 Nick Bumpaous, Personal communication.
33 Substitute House Bill 1723.
34 Substitute House Bill 1723.
35 Anonymous, Personal communication with Hanford worker.
36 Nick Bumpaous, Personal communication.
37 Substitute House Bill 1723, 1.
Establishing the Hanford Workforce Engagement Center

The union representatives also explained to us that around the same time (April 2018), the DOE, under pressure from Senators Murray and Cantwell, provided funds to open the Hanford Workforce Engagement Center (HWEC). The purpose of the HWEC is to help workers and their families with occupational health concerns. Significantly, the DOE-funded three staff members to assist workers and their families navigate the workers’ compensation process. Since the 2018 Presumption law passed, the HWEC has helped about 4000 workers and their families through the claims process (for workers’ compensation or survivorship pensions), and there are about 2,900 more workers in the queue.

Implementation of the Presumption law

Early increase in workers’ compensation claims

Just short of one year since the Hanford Presumption Law passed, we found that many workers thought the workers’ compensation process was easier to navigate. The 2006 Systemic Injustice report on Hanford workers’ compensation showed that the number of claims processed by L&I have steadily decreased every year since 2000, from about 406 claims in 2001 to about 298 claims in 2005. The report suggested that systemic oppression of workers’ compensation claims was at least partially to blame for this phenomenon. The report also outlined how Hanford workers’ compensation claims were denied at twice the rate of other self-insured employers in the state. The Hanford presumption law managed to reverse some of these trends.

We found that when Hanford workers file for workers’ compensation, they designate whether their claim qualifies for the presumption law. This allows L&I and Penser to quickly process their claim, but it also allows for accurate measurement of the effects of the law. In mid-May 2019, almost a year since the Hanford Presumption Law went into effect, 131 claims citing the presumption clause were filed. 60 of these claims were accepted, 20 were denied, and the remaining claims were pending review. Out of the cases with an official result, there is an acceptance rate of 75%. To compare, in 2018 L&I reported 40,720 self-insurer claims filed, and almost 30,000 of those were eligible for time loss compensation, medical compensation, or both. That amounts to an acceptance rate of about 73%. The Hanford Presumption Law has helped workers receive compensation at similar rates to self-insurer rates in the State of Washington overall. Despite early increases in the number of claims filed under the presumption law, we also uncovered many challenges and obstacles to adequate implementation of the law, described in the section below.

38 “Hanford Workers Engagement Center.”
39 “Hanford Workers Engagement Center.”
40 Anonymous, Personal communication with Hanford worker.
Challenges to the presumption law


Perhaps the most direct challenge to the implementation of the presumption law is the lawsuit filed by the DOE in an attempt to strike down the law. In December 2018, the federal government responded to the Hanford Presumption Law by filing an official complaint against the State of Washington. The federal government claimed that the law violated the Supremacy Clause of the Constitution in two ways. First, the federal government argued that the State of Washington tried to regulate the federal government through the amendment of their self-insured workers’ compensation laws. Furthermore, the federal government argued that this amendment explicitly discriminated against the federal government and that the DOE is shielded from this state intervention because the Hanford site is a federal facility performing a federal function. The federal government officially filed a motion for summary judgment against the State of Washington on March 1st, 2019.

The State of Washington fought back with their own cross-motion for summary judgment on March 22nd, 2019. Filed on behalf of Washington State Governor Jay Inslee, the State’s cross-motion for summary judgment rebuts the federal government’s claims. The State of Washington claims that the presumption law does not unfairly discriminate against the federal government in part because the law was modeled after an existing law, 1997 firefighter bill that included a presumption clause for workers’ compensation. The state also points to the 1954 MOU between the State of Washington and the DOE where the DOE agreed to process claims as a self-insurer under Washington State L&I.

Both the federal government and the state of Washington agreed to let summary judgment determine the fate of the lawsuit. On May 22nd, 2019, Judge Stanley Bastian oversaw oral arguments at the U.S. District Court for Eastern Washington. Initially, Judge Bastian seemed sympathetic to the state of Washington’s case, but he has not yet made a ruling. A ruling on summary judgment is expected within the next two weeks. Regardless of Judge Bastian’s ruling, there will likely be an appeal. The legal process is expected to continue for several more years.

Penser North America’s disregard for the new law

While the passage of the presumption law should have streamlined the claims process for workers and third-party administrator Penser North America, workers still face significant barriers to receiving their compensation. This is largely due to Penser’s lack of implementation of the presumption law, which is apparent by their rebuttal of easily-processed claims under the

43 Annette Cary, “Feds Ask Why Some People at Hanford Should Be Compensated for Illness and Not Others.”
new law, untimely response to claims, and their refusal to provide compensation to workers who have had their claims approved.

According to S. Treznoski, the L&I manager for Hanford workers’ compensation claims, Washington State L&I educated Penser claims managers about the new law about how they want claims processed when the law was passed in June 2018, but they do still field questions from Penser claims managers. Further, we found that Penser still attempts to deny presumption law claims despite having insufficient evidence to rebut the presumption under the new law. In February of 2019, Patricia Hicks, a Penser manager, recalled receiving 92 claims from Hanford that cited the presumption law. According to Hicks, all 92 of those claims would have been denied in the past system. Under the new system, Hicks wrote that 46 passed the threshold for presumption, but only 35 were recommended for approval to L&I.44 Eventually, L&I overruled Penser’s determination and approved 10 out of the 11 claims that were recommended for denial. Additionally, L&I has had conversations with both Penser claims managers and a DOE contact who oversees Penser.45 Nonetheless, this demonstrated Penser’s lack of interested in following the presumption law, and instead they continue to disrupt the claims process by denying claims that pass the threshold for presumption in order to protect the DOE from bearing financial risk.

Penser also often unlawfully takes more than their allotted 60 days to approve or deny the claim and report it to Washington L&I. If Penser determines that additional time is required to process a claim, they can request an “interlocutory” from the state on a case by case basis. However, since the onset of the presumption law, Penser has requested an “interlocutory” for every claim filed. Often, Penser’s reasoning is that they require items that are no longer necessary under the new law. Under the presumption law workers need only prove three things: that they worked at Hanford in one of the covered areas, that they worked there for at least 8 hours, and that they have one of the covered conditions. Despite this, Penser is operating as if they are under the old system; for example, asking for 20-30 years of medical records. Penser also requests additional time to search for evidence to rebut the presumption claim (e.g., the worker smoked and the claim if for lung cancer, or the worker has diabetes and the claim is for neuropathy) or uses the same unjust tactics that are no longer required under the new law (e.g., having an independent medical exam). This behavior has led to approximately 98 percent of claims not being adjudicated within the allotted 60 days, according to union sources. To our knowledge, no penalty, financial or otherwise, have been given for not adhering to the 60-day deadline.

On top of the bureaucratic and administrative barriers, Penser has recently started refusing to provide financial assistance to workers who have already had their claims approved. In one instance, Lonnie Rouse, a Hanford worker, had his claim accepted after over a decade of fighting with Penser. Once his claim was approved by L&I however, Mr. Rouse received a letter from Penser where he was informed that Penser and the DOE refused to pay out his claim for over a decade of medical expenses until after the lawsuit with the state of Washington was decided. In the letter, Penser made it clear that they expected the DOE to win the lawsuit and

44 Hicks, Patricia, Declaration of Patricia Hicks. United States of America v. State of Washington.
45 Starla Treznoski, Personal Communication.
did not intend to pay out Mr. Rouse’s claim. Mr. Rouse was diagnosed with toxic encephalopathy and has experienced a dramatic reduction in his capacity to fight this claim. Without the help of his wife, Mr. Rouse would likely have succumbed to administrative fatigue long ago. Despite making it through one hurdle, Mr. Rouse now faces a much more significant barrier to financial compensation. Penser has been allowed to ignore the presumption law for too long, with untenable consequences for workers.

Penser presents a convoluted bureaucratic trail for workers who do file their claims, but many workers are dissuaded before they even get to that stage. According to legal documents, Penser and L&I estimate that 8,000 workers who have been previously denied workers’ compensation would be eligible to apply again under the presumption law. Since the HWEC opened in early 2018, they have helped nearly 4,000 workers understand the claims process and collect supporting evidence for their workers’ compensation claims. The HWEC is allowed to help workers understand claims paperwork, but they are not allowed to file claims on behalf of workers, or act as a worker’s representative in the claims process. This means that even though the HWEC can collect data on how many workers they help, they cannot accurately measure how many of those workers file for workers’ compensation. Currently, the numbers from the HWEC do not align with the number of claims that have been filed in the past year. This discrepancy suggests that more work is needed to help workers feel comfortable with the new claims system before they will start utilizing the claims process under the presumption law.

Future Recommendations

In order to better address workers’ needs in the workers’ compensation process, more changes must be implemented. The relationship between Penser and L&I must be amended in order to protect the health and safety of workers before profits. In addition, L&I must be more transparent regarding their claims data and decisions. Finally, the HWEC ought to receive a funding source independent of the DOE.

First, L&I should use their power to enforce state laws to hold Penser accountable to follow the Hanford Presumption Law. According to the MOU, Washington State L&I has the power to oversee and enforce laws regarding the state self-insurance program. Therefore L&I should hold Penser accountable to follow the stipulations in the presumption law. Penser has loosely interpreted the presumption law to their advantage in too many scenarios. Even before the presumption law, Penser regularly failed to meet the 60-day period to make a recommendation on a claim, leaving workers in limbo for much longer than necessary. After the presumption law was passed Penser continued to deny claims despite insufficient evidence to rebut causation. Now, after claims have been approved Penser refuses to provide the financial assistance because they will not accept the presumption law as constitutional. The legal battle over the presumption law is likely to continue after the first decision on summary judgment. With an appeal likely to follow the next decision, L&I needs to step in and regulate Penser during the

interim period. Without this step, many workers will continue to receive no workers’ compensation despite their claims being approved.

Second, L&I should provide more information and data in order to better evaluate the future of Hanford workers’ compensation. L&I does not categorically provide transparent data on claims. L&I has reported numbers of claims accepted or denied for deposition purposes during the legal battle, but they do not make clear the reasons behind these decisions. More transparency about the reasoning behind claims decisions will help workers better understand the claims process and feel more comfortable filing claims in the future.

Finally, independent funding should be secured for the Hanford Workforce Engagement Center. The HWEC assists Hanford workers through most of the claims process, and so far, they have successfully outreached to over 4,000 workers. Current funding for the HWEC comes from the DOE. This funding is not guaranteed in the future, and the HWEC would likely lose funding if they lost support from political allies in the Senate. If the HWEC received outside funding, they would have more flexibility to advocate for workers without the DOE conflict of interest. Further funding and flexibility will allow the HWEC to file claims on behalf of workers, manage claims for workers who are often experiencing disability, and better hold the DOE accountable for accepting claims. This could increase the number of workers who feel comfortable filing claims and help get medical assistance to all workers in need.

Accountability for Penser, transparency from L&I, and financial flexibility for the HWEC would go a long way in changing the systemic injustices that Hanford workers have experienced. These steps will allow the presumption law to have more of a pronounced impact on workers lives and allow for future monitoring and evaluation of worker’s needs. The Hanford presumption law set the stage for improved workers healthcare rights. With the future of the law in dispute, it is imperative that all stakeholders from local workers to state and federal politicians work together to enact these recommendations.
References


Anonymous. Personal communication with Hanford worker, April 26, 2019.


Nick Bumpaous. Personal communication, April 26, 2019.


