

## Remembering the Legal Legacy of the Triangle Shirtwaist Factory Fire 100 Years Later

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One hundred years ago on 25 March 1911, New York City suffered its most shocking and deadly industrial tragedy to befall the city when 146 young, mostly immigrant, women died as a result of a fire that broke out on the eighth floor of the Asch Building located on Washington Place and Greene Street (now the Brown Building on the New York University campus). Much has been written and documented about the Triangle Shirtwaist Factory fire and its aftermath, particularly the fire regulations that were inaugurated as a result. But fewer people know that the deadly fire occurred one day after the New York Court of Appeals had declared New York's first Workmen's Compensation law unconstitutional, so that the families of the victims of the fire received only minimal compensation for their loss, only \$75 per victim.

Known as the Wainwright-Phillips Compulsory Compensation Act (Wainwright), New York's first Workmen's Compensation law had taken effect on September 1, 1910. It was the country's first modern workmen's (now referred to using the gender-neutral term "workers") compensation statute (John Fabian Witt, "The Transformation of Work and the Law of Workplace Accidents, 1842-1910." *The Yale Law Journal*, Vol. 107, No. 5 (Mar., 1998), pp. 1467-1502). In many ways, Wainwright was revolutionary because it substantially altered the degree of responsibility that an employer had for the safety of its employee.

Prior to Wainwright, three common law defenses operated to shield employers when injured employees sued them for work-related negligence. The first defense was **assumption of the risk**: the employee had assumed the risks of the job by accepting to work for the employer. The second defense was **contributory negligence**: that the worker had not exercised due care in the performance of the job. The third employer defense, **the "fellow-servant" doctrine**, required that the injured employee first bring a cause of action against the fellow employee who caused the accident, and not against the employer. The fellow-servant rule thus shielded employers from negligence suits where an employee was injured by a fellow employee. Wainwright changed this by holding the employer equally liable with the negligent fellow employee for injuries an employee sustained on the job.

Wainwright's constitutionality was quickly questioned in *Ives v. South Buffalo Railway Company*, 201 N.Y. 271; 94 N.E. 431 (1911). Ives had sued the railroad under Wainwright for injuries in the course of his work for the railroad. Prior to Wainwright, Ives would have had to sue his fellow employee under the fellow-servant doctrine before bringing a suit directly against his employer given the manner in which he was injured. Employed as a switchman, Ives claimed that he was standing on a coke train and that he sprained his ankle as a result of the sudden jarring caused when the engineer took up the slack between the trains. His injuries caused him to lose several weeks of work. The railroad admitted all of the facts alleged but challenged the constitutionality of the law under which the suit was brought. The Court of Appeals agreed with the railroad and declared the Wainwright Compensation Act unconstitutional on the grounds that the law deprived the employer of property in violation of the Due Process Clause of the U.S. Constitution. That left Ives with no further legal recourse for certiorari to the U.S. Supreme Court because the state court had found in favor of the federal due process right.

But the events of the following day at the Triangle Shirtwaist Factory so shocked the city and the State that progressive reformers began to push for worker protection once again in the New York

State legislature. The result was the passage of the New York's Workmen's Compensation Act of 1914. Under the new law, workers gave up their right to sue their employers in negligence for injuries, illnesses or disabilities sustained on the job, in exchange for payment from a workers' compensation fund administered by the New York State Insurance Fund.

Today there are Workers Compensation statutes in every state, and each state has set up its own system of regulations and compensation. Federal employees are covered under the Federal Employees Compensation Act (FECA) that was passed in 1916. The Longshore and Harbor Workers' Compensation Act (LHWCA) was enacted in 1927 to protect workers injured at sea. The legal legacy of the 146 victims of the Triangle Shirtwaist Factory has been great. We owe those young women a tremendous debt of gratitude for the statutory protections we enjoy as a result of their tragic deaths one hundred years ago.