THE FIRE RISES…

In the late afternoon of Saturday, March 25, 1911, a fire started in a fabric scrap bin at the Triangle Shirtwaist Factory. Approximately 30 minutes later, 146 employees of the company died as a result of the eventual conflagration. The factory was located on the 8th, 9th and 10th floors of the building it occupied in the lower Manhattan section of New York City. Many of the employees died as a result of jumping out of the building in order to avoid being burned to death. The vast majority of the victims were female, the youngest worker to perish was only 14 years old.

The conditions the factory workers faced prior to the fire would be considered deplorable by today's standards, although in 1911, the garment workers at Triangle were fortunate enough to work in a factory with windows, restrooms and electric powered sewing machines. The employees worked 52 hours per week and were paid between 14 cents and 23 cents per hour (adjusted for inflation, approximately $3.20 to $5.50 per hour). During work hours, one of the exits on the main factory floor remained locked so that all of the employees were steered to leave out of only one exit for inspection. This arrangement allowed the factory floor manager at the end of a shift to inspect the employees' purses to ensure that they were not stealing scraps of cloth for personal use.

We often complain of having to "put out fires" at work. The employees of Triangle occasionally had to extinguish actual fires in the factory. The owners of the company, Max Blanck and Isaac Harris, had previously collected on insurance policies from fires that occurred at their factory prior to 1911. They responded to these prior fires at the factory, not by implementing safety measures such as sprinkler systems, but rather to purchase large insurance policies.

When the scrap bin fire began on March 25, 1911, the factory manager elected to try to put it out himself instead of alerting the fire department. This is likely because the factory workers had successfully put out fires such as this on several occasions in the past. Unfortunately, the cotton fabric strips that caught fire in the bin were highly flammable and the fire escalated quickly. By the time the fire department was notified, the results were catastrophic.

Since one of the exits was locked, many of the workers became trapped and were unable to escape down the stairway. Panicked workers fled onto an exterior fire escape attached to the building. The unit was poorly constructed and collapsed due to the weight of the employees, sending approximately 20 people to their deaths on the street below.

During the factory fire, a young social worker named Frances Perkins was having tea with a friend at a nearby house. She heard the screams of the victims and the fire truck bells racing down the street. She ran down to the scene and witnessed women throwing themselves out of windows of the burning building, plummeting to their deaths. Seeing this horror left an indelible mark on her psyche and motivated her to dedicate her career to the improvement of workers' lives. She became the executive secretary for the Committee on Safety in New York

and later became the Secretary of Labor under President Franklin Roosevelt. She was the first woman in history to serve as a Cabinet secretary.

Following the disaster, Max Blanck and Isaac Harris faced criminal manslaughter charges in New York City. They were acquitted and faced no criminal repercussions as a result of the 146 deaths. In fact, the owners of the factory received a substantial payout from the insurance policy they carried. They received $60,000 (adjusted for inflation, approx. $1.47 million) from the insurance company following the destruction of the factory.

The victims' families did eventually obtain a wrongful death verdict against the owners. However, the award was only $75 per deceased victim (adjusted for inflation, approx. $1,837). The civil judgment total payout was essentially 18% of the insurance policy monies collected by the factory owners.

There was understandable public outrage over the fire and the massive number of preventable deaths that resulted from it. The disaster's impact on the improvement of working conditions for employees cannot be overstated. In the aftermath of the tragedy, New York State established a commission to investigate factory conditions for workers and as a result, the legislature promptly passed laws and regulations aimed at improving safety.

It is easy to take for granted the protections that workers have now compared to the conditions that the Triangle garment workers labored under in 1911. For example, the employees of Triangle were not afforded any of these current statutory protections (not intended to be an exhaustive list)-

- Occupational Safety and Health Administration
- Fair Labor Standards Act (minimum wage, prohibition on child labor, overtime pay)
- Unemployment benefits
- Family Medical Leave Act
- Whistleblower Protection Act
- Americans with Disabilities Act
- Civil Rights Act of 1964 (prohibiting employment discrimination based on race, gender, etc.)
- National Labor Relations Act (right to collective bargaining)
- Patient Protection and Affordable Care Act
- Consolidated Omnibus Budget Reconciliation Act
- Fire Prevention and Control Act
- National Environmental Policy Act
- Vocational Rehabilitation Act
- Social Security

Of course, the social program which we all hold near and dear to our hearts, workers' compensation, was not in existence in 1911 America either. However, not coincidentally, the New York legislature did create its state's first workers' compensation program shortly after the

tragedy. California followed suit in 1913 with the passage of the Boynton Act, which was replaced in 1917 by the Workmen's Compensation Insurance and Safety Act (our state's current compensation law).

At the time of the Triangle factory tragedy, an employee only had a potential civil remedy against an employer for workplace accidents. The employee had to establish employer fault through a lengthy litigation process. The employee rarely prevailed due to the defenses of contributory negligence, the fellow servant rule (recovery is barred if injury is caused by coworker) and the assumption of the risk doctrine.

In 1911, the estimate is that approximately 100 persons were dying in workplace accidents in America per day. Workers' compensation laws came into existence during this era of dangerous workplace environments and inadequate civil remedies for workers. The general purposes of workers' compensation laws were as follows (as stated in *SG Borello & Sons v DIR)*-

1. Ensure that the cost of industrial injuries will be part of the cost of goods rather than a burden on society
2. To guarantee prompt, limited compensation for an employee's work injury, regardless of fault
3. To encourage workplace safety
4. To insulate the employer from tort liability for work injuries

Whether the stated goals of workers' compensation laws have been met is debatable. What is not debatable is that the recent national trend has been to reduce workers' compensation benefits payable to workers. This trend threatens to erode the bargain that was reached between employees and employers over 100 years ago.

For example, one of the trends is that some states now allow an employer to "opt out" of workers' compensation insurance coverage and the corresponding regulations and protections that come with the program. Such employers are allowed to purchase their own work injury insurance plans that typically pay employees less compensation for injuries than they would be afforded under a state regulated workers' compensation insurance plan.

The nationwide trend of reforming workers' compensation laws to the workers' detriment caught the attention of several US Senators in 2015, causing them to write a joint letter to the Department of Labor Secretary encouraging him to investigate individual state programs. A commission under the Nixon administration in 1972 set forth 19 recommended minimum standards for benefits that every state workers' compensation program should provide. The Senators' joint letter expressed concern that several states currently have programs that would not meet the standards recommended by the 1972 commission. The Senators expressed fear that there is a nationwide "race to the bottom" competition among the states regarding the benefits that employers are required to provide to injured workers.

We currently are in an era where states pass “right to work” laws, politicians call for a reduction in regulations on business, employers offer less than 40-hour work weeks in order to avoid providing employee benefits, and where many people work in the gig economy as “independent contractors.” These actions result in workers performing profitable services without the corresponding protections and benefits of the modern employee-employer relationship that has developed over the last 100 years. It is safe to assume that our country’s work environment will never return to the state that existed in 1911, but workers have reason to be concerned whether there will continue to be reductions in their workplace protections, benefits, and ability to collectively bargain.

It is unspeakably tragic that 146 people had to die in order to compel politicians to enact sweeping workplace safety protections and comprehensive workers’ compensation programs. Hopefully the rights that workers have acquired over the last 107 years will avoid further erosion so that their deaths will not have been in vain.