THE CRUEL AND UNUSUAL IRONY OF PRISONER WORK RELATED INJURIES IN THE UNITED STATES

Colleen Dougherty*

I. INTRODUCTION

On February 2, 1985, John Bibbs, a Missouri State Penitentiary inmate, lost parts of two of his fingers when they were caught in the gears of a defective piece of machinery at the prison’s license plate manufacturing facility.¹ A year later, Walter Warren, another prisoner in Missouri, broke his wrist after a board “kicked back” on an industrial table saw in the prison’s furniture factory. The saw was not equipped with “anti-kickback” safety features.² On February 29, 1992, Chris Arnold, an inmate in a South Carolina prison, was injured after a twenty-five gallon steam pot tipped over and severely burned him. Prison officials had been repeatedly warned that the machine had been malfunctioning.³

As the law currently stands, it is unclear whether state or federal prisoners who are injured by defective working equipment in prison factories can seek relief by bringing an Eighth Amendment action claiming cruel and unusual punishment.⁴ Certain court decisions acknowledge that a prisoner who is forced to work with defective prison equipment and is

* University of Pennsylvania Law School, J.D. Candidate, 2008.
1. Bibbs v. Armontrout, 943 F.2d 26, 26 (8th Cir. 1991). Bibb’s complaint alleged that the machine was missing a protective shield which normally covered its gears. Id.
2. Warren v. Missouri, 995 F.2d 130, 130 (8th Cir. 1993).
3. Arnold v. S.C Dep’t of Corr., 843 F. Supp. 110, 111 (D.S.C. 1994). Arnold’s complaint alleged that the official failed “to adequately supervise inmate employees” and “to use adequate care concerning cafeteria equipment. Id.
4. See Morgan v. Morgensen, 465 F. 3d 1041 (9th Cir. 2006) (holding that a prison guard was not immune from an Eighth Amendment claim after he ordered a prisoner to work on a faulty machine). But see Arnold, 843 F. Supp. at 113 (holding that allowing Eighth Amendment claims against prison officials who required prison workers to use faulty tools “would give constitutional recognition to run-of-the-mill negligence actions”).

483
injured should be able to bring an Eighth Amendment claim, while others
have held that the existence of malfunctioning prison equipment, even
where prison officials are alleged to have known about it, does not rise to
the level of a constitutional violation.

In cases where courts have refused to apply the Eighth Amendment to
prison injury cases, inmates have been encouraged to seek worker's
compensation benefits for their injury. Nevertheless, the availability of
this remedy for state prisoners varies widely from state to state. The lack
of financial and legal recourse for inmates injured while working in prison
presents a problem from both constitutional and ethical perspectives. From
the inception of the prison system in the United States, the idea of prisoners
working has created an impassioned debate over the ethics and economics
of prisoner labor. This dispute, which is replete with examples of the
exploitation of prisoners as cheap labor at the hands of state and private
contractors, revolves around the costs and benefits of forcing prisoners to
work while incarcerated. From the “leasing” of prisoners in the post-Civil
War South to work for private individuals and companies (with barbaric
treatment as a frequent result), to the abuse and overworking of inmates
within state run prisons, the history of prison labor contains many examples
of exploitation.

Recognizing the potential abuse of the prisoner/captor relationship, the
Founders drafted the Eighth Amendment with “‘an intention to limit the
power of those entrusted with the criminal-law function of government” and
“designed [it] to protect those convicted of crimes.” As the law exists
today, however, prisoners in many states can be severely injured while
forced to work with defective or unsafe prison machinery but have
difficulty seeking a remedy because they cannot meet the onerous
deliberate indifference standard required to establish an Eighth Amendment
violation. Similarly, their status as prisoners precludes them from

5. See Morgan, 465 F.3d at 1047 (holding an Eighth Amendment violation exists
when a prison official “[compels] an inmate to continue operating defective and dangerous
prison work equipment”).
6. See Bibbs, 943 F.2d at 27 (holding that a prisoner could not “prevail on his Eighth
Amendment claim” because he failed to establish whether prison officials were aware of
defective equipment); Arnold, 843 F. Supp. at 114 (refusing to apply the Eighth Amendment
to actions involving “work-related prison injuries resulting from malfunctioning
equipment”).
7. Arnold, 843 F. Supp. at 113 n.3. While Arnold was not entitled to damages via his
Eighth Amendment claim, the court acknowledged that “his remedy lies in workers’
compensation, just as it does for any other employee who is injure on the job.” Id.
8. See generally, DAVID SCHICOR, PUNISHMENT FOR PROFIT 26-34 (Sage Publications
1995).
651, 664 (1977)).
10. Id.
receiving the benefits of state workers' compensation statutes. As a result, John Bibbs, Walter Warren, and Chris Arnold's Eighth Amendment claims were all dismissed by the courts.

The body of caselaw that has denied inmates from seeking remedies for prison-related injuries cannot be consistent with the Eighth Amendment's protection against cruel and unusual punishment. In this Comment, I will argue that the current ambiguity across the circuits over the applicability of prisoner injuries resulting from malfunctioning prison equipment should be resolved by the Supreme Court's recognition that these claims are serious enough to be within the domain of the Eighth Amendment. I will also argue that certain lower federal courts that have considered prison work-related injury cases to "make a mockery" of the Eighth Amendment have done so by using an overly harsh interpretation of the deliberate indifference test that runs contrary to the Supreme Court's intentions. My discussion will begin with a review of the history of prison labor in the United States before proceeding to an analysis of pertinent Eighth Amendment cases. It will conclude with a summary of state workers' compensation laws in the prison context.

II. HISTORY OF PRISON LABOR

Throughout the nineteenth and early twentieth centuries, prison labor was central to the operation of the prison system. As Steven Garvey comments, "[t]he history of prison is in large measure a history of prison labor." Accordingly, the existence of prison labor in the United States has been surrounded by controversy and debate between prison reformers, unions, and the state. Those who support prisoner labor explain that it contributes to the discipline of the prison population, combats idleness, allows the prisoner to pay back the state for the costs of incarceration, and teaches marketable skills that can be used upon re-entry to the community. Critics of this system, on the other hand, "see inmates as coerced workers" and consider prison work to be "the modern-day equivalent of slave labor." As James Jacobs explains:

Two specters haunt American penology . . . . The first vision anguishes about the risk that prison labour will deteriorate into a
system of punishment, exploitation and even torture; the second is vexed about the anomaly that citizens pay taxes to support idle prisoners; it thus focuses on the relationship of prison labour to social equity.\textsuperscript{16}

In the United States, the debate began in the eighteenth century, when prisons took the form of the penitentiary. The early penitentiary system in colonial and post-revolutionary America was designed to use labor as a tool to “lead to reformation . . . [and] the rebirth of character.”\textsuperscript{17}

Two models of the penitentiary evolved: the Walnut Street Jail in Philadelphia and the Auburn Penitentiary in New York.\textsuperscript{18} The Walnut Street Jail used labor and solitude as “twin engines of moral reform” in what is referred to as the “Pennsylvania System.”\textsuperscript{19} Men convicted of felonies were placed in solitary confinement and labor was used as a way to combat prisoner idleness.\textsuperscript{20} Solitude, on the one hand, “deployed the conscience to break the inmates down” while labor served to “discipline the body, teach new habits, and lead to a recovery of lost virtue.”\textsuperscript{21} The Walnut Street Jail’s policy regarding prison labor was based on the Quaker view of hard work as “a more effective and humane punishment than physical punishment because it was assumed to have a reforming effect.”\textsuperscript{22} Although prisoners were paid equal or lesser wages than the standard pay outside of prison for their work and had the cost of their upkeep withdrawn from their pay\textsuperscript{23}, the Walnut Street Jail had difficulty sustaining itself economically.\textsuperscript{24}

The penitentiary in Auburn, New York departed from the Pennsylvania System’s practice of total solitary confinement. Instead, prisoners worked together during the day in silence and were separated at night into individual cells.\textsuperscript{25} Known as the “silent system,” silence was strictly enforced under a premise that prisoners would both corrupt each other by conversing and that conversations would distract them from

\begin{footnotesize}

17. Garvey,\textsuperscript{supra} note 11 at 347 (quoting \textit{MICHAEL MERANZE}, \textit{LABORATORIES OF VIRTUE: PUNISHMENT, REVOLUTION, AND AUTHORITY IN PHILADELPHIA, 1760-1835} at 55 (1996)).

18. SCHICOR,\textsuperscript{supra} note 8, at 26.

19. Garvey,\textsuperscript{supra} note 11, at 348.

20. \textit{Id.} Garvey notes that idleness was viewed “as the principal cause of crime” by many reformers.


22. SCHICOR,\textsuperscript{supra} note 8, at 27.

23. \textit{Id.}

24. Garvey,\textsuperscript{supra} note 11.

25. SCHICOR,\textsuperscript{supra} note 8, at 28.
\end{footnotesize}
meditating on their crimes.26 Violators of the silent rule were subject to corporal punishment.27

The Auburn model became the “leading model for prisons in America” by supporting the growth of “modern industrial production” in the prison environment.28 The Auburn Penal System “put forward a model of labor subordinated on industrial lives. Where the silent system prevails, labor saving machines and communal work are introduced along with factory discipline.”29 The Auburn prison developed “during a period of rapid industrial development in the Western world” which offered lucrative opportunities for the private sector to become involved in prison labor.30 States began realizing that it was neither economically profitable nor conducive to creating self-sufficient prison to organize prison labor in a system in which “the state maintains control over the production process, and prison-made goods are sold on the open market.”31 Therefore, the system under which prison labor was organized shifted and states began “sell[ing] the labor of its prisoners to private firms” because “the search for profit was steadily becoming more important” than the moral reform of the prisoners.32

The relationship between the private sector and the prison has been described as “[t]he contractor enters the prison, efficiently organizes production, industrializes the workshops, partially pays for work done, manufactures non-craft goods and personally handles the distribution of these goods on the free market.”33 The Auburn Penitentiary was economically self-sufficient and made a profit for the government by producing goods such as footwear, clothing, carpets, barrels, harnesses, and furniture.34 Sing Sing inmates, who were incarcerated at another prison based on the Auburn model, worked in marble quarries, while Newgate prison in New York “contracted out its shoe industry in 1802 for $1,200 per month.”35 Steven Garvey commented that when moral and profit goals collided in this system, prison officials at Auburn placed an emphasis on “monetary return” over moral reform.36 The Auburn system “illustrated

26. Id.
27. Id.
28. Id. at 28.
29. Id. at 28 (quoting, MELOSSI & PAVARINI, THE PRISONS AND THE FACTORY: ORIGINS OF THE PENITENTIARY SYSTEM (Totowa 1981)).
30. SCHICOR, supra note 8, at 29.
31. Garvey, supra note 11, at 344.
32. Id. at 344, 352.
33. SCHICOR, supra note 8, at 29 (quoting MELOSSI & PAVARINI, THE PRISONS AND THE FACTORY: ORIGINS OF THE PENITENTIARY SYSTEM 136 (Totowa 1981)).
34. SCHICOR, supra note 8, at 29.
35. Id.
36. Garvey, supra note 11, at 352.
how private, for-profit interest could be infused into the penal system. Prisoners were used in industrial production because of the increasing need for a steady and reliable source of workers at a time of great industrial expansion.\textsuperscript{37}

In the nineteenth century, a system known as the "lease system" became popular in frontier areas.\textsuperscript{38} Under this model, private contractors took over the operation of the prison completely, and the state no longer had responsibility for the care or discipline of the prisoners.\textsuperscript{39}

For instance, in 1844, during an economic depression, Louisiana leased its penitentiary for five years to a private company for $50,000 a year.\textsuperscript{40} After the Civil War, the South expanded its leasing system as a response to the economic devastation of the war's aftermath and the disappearance of its low-cost labor force: slaves.\textsuperscript{41} The end of slavery "prompted the search for a replacement of the slaves for its labor-intensive economy."\textsuperscript{42} In the 1870s, the leasing of convict labor became very profitable for the South. These profits came at the expense of prisoners—mainly African Americans—forced into conditions worse than slavery.\textsuperscript{43}

Prisoners were often leased out to private entrepreneurs who worked them unmercifully, sometimes to death, in mining, agriculture, road works and in other jobs. Even when the prison officials retained managerial control, there were outrageous abuses. That the prisoners oppressed by this penal slavery were almost all black reinforces . . . anxiety about current calls to reintroduce hard labor.\textsuperscript{44}

In South Carolina, "the death rate of convicts leased to the railroads was 45\% in 1877 to 1899, in Arkansas it was 25\%, and in Mississippi, 16\%."\textsuperscript{45} The system operated so that private contractors contracted for a certain number of convicts, not for individual human beings.\textsuperscript{46} Therefore, if one convict died, he was just replaced with another.\textsuperscript{47} Overall, the death rates of leased convicts was somewhere between seventeen and forty

\textsuperscript{37} Schicor, \textit{supra} note 8, at 29-30.
\textsuperscript{38} Id. at 34.
\textsuperscript{39} Id.
\textsuperscript{40} Id.
\textsuperscript{41} Id. at 35.
\textsuperscript{42} Id.
\textsuperscript{43} Id. at 36.
\textsuperscript{44} Jacobs, \textit{supra} note 16, at 270.
\textsuperscript{45} Schicor, \textit{supra} note 8, at 36.
\textsuperscript{46} Id.
\textsuperscript{47} Id. at 37.
percent during the worst years of convict leasing in the South. 48 In Alabama, a doctor “estimated that most convicts died within three years.” 49

However, in the early twentieth century, increasing pressure from labor unions turned prison labor into a “major political issue.” 50 As unions grew, they became increasingly vocal about the perceived economic threat free laborers faced from prison labor. 51 Unions pressured both the state and federal governments to pass legislation that would decrease this threat by “banning prison made goods from entering interstate commerce” or “limiting the sale of prison-made goods to state agencies.” 52 The economic depression that the United States faced in the 1870s and 1890s provided support for the union argument that jobs should go to non-convicts rather than prisoners. 53 Other opponents to prison labor were reformers, who supported the idea of prisoners working but felt the system in which prisons contracted with private parties for prison labor was more focused on profit than on reform. 54 In response to the public outcry, a compromise was settled upon in most states in which prisoners would still work, but the state would control the labor and would also provide a market for the goods produced. 55

Union pressure on the federal government resulted in Congress passing the Hawes-Cooper Act in 1929 and the Ashurst-Sumners Act in 1935. The Hawes-Cooper Act mandated “state law restrictions on the sale of prison-made goods.” 56 The Ashurst-Sumners Act, on the other hand, made it a federal crime to “knowingly transport prison-made goods into a state that prohibited their sale.” 57 By 1940, Congress had amended the Ashurst-Sumners Act to make it a federal crime to transport prison-made

48. See Garvey, supra note 11, at 357 (“The mortality rate of leased prisoners was appalling, ranging at its worst from 17-40% annually.”).
49. Id. (quoting Christopher R. Adamson, Punishment After Slavery: Southern State Penal Systems, 1865-1890, 30 SOC. PROBS. 555, 566 (1983)).
50. Id. at 358.
51. Id.
52. Id. at 361-362.
53. Id. at 362 (“When depressions hit the United States in the 1870s and 1890s, the resulting unemployment intensified labor’s efforts to shut down prison industry once and for all.”).
54. Id. at 360 (“[T]he contractor’s pursuit of profit too often conflicted with the pursuit of reform.”).
55. Garvey, supra note 11, at 362-63 (noting that “[t]he state-use system meant that free workers would no longer be forced to compete with prisoners for private sector jobs and that prison-made goods would no longer compete with free laborers’ goods on the open market”).
57. Garvey, supra note 11 at 367.
goods into any state, regardless of its laws.\textsuperscript{58} As Steven Garvey explains, "[t]he Hawes-Cooper and Ashurst-Sumners Acts eliminated whatever room remained for prison industries to sell their goods on the national market."\textsuperscript{59} Therefore, state-run prison labor, where the government both oversees production and bought all the products, became the only feasible option for prison labor.\textsuperscript{60}

In 1934, the Federal Government created Federal Prison Industries, Inc. (FPI), an organization that facilitates the production of goods by inmates in federally operated factories. Since all prisoners incarcerated in federal prisons must work if they are medically able,\textsuperscript{61} inmates typically have institutional jobs in food services, ground keeping, or maintenance or apply for a job in FPI.\textsuperscript{62} In 2005, institutional work assignments paid from twelve cents to forty cents an hour, while a job in FPI paid from twenty-three cents to one dollar and fifteen cents an hour.\textsuperscript{63}

In 2005, FPI employed seventeen percent of the federal prison population, or 19,720 inmates.\textsuperscript{64} Prisoners work in one of FPI's 106 factories, which produce goods in five main areas: metals, textiles, furniture, electronics, and graphic arts. Pursuant to federal regulation, all of these products, which include "missile cable assemblies, Kevlar military helmets, executive office furniture, prescription eye wear, metal prison security doors, military uniforms and data entry of patent and trademark documents,"\textsuperscript{65} are sold to the federal government. Currently, the war in Iraq has placed higher demands on FPI's electronics and textiles groups to

\textsuperscript{58} Id. (stating that the 1940 amendment to the Ashurst-Sumners Act "made the interstate transportation and sale of prison-made goods itself a federal crime no matter what state law provided").

\textsuperscript{59} Id.

\textsuperscript{60} Id. (noting that following the enactment of the Hawes-Cooper and Ashurst-Sumners Acts, "the state-use system became the only real way of organizing prison labor" and that six years following the enactment, "almost all prisoners worked for the state").

\textsuperscript{61} U.S. DEPT. OF JUSTICE, FEDERAL BUREAU OF PRISONS, STATE OF THE BUREAU 10 (2005), \textit{available at} http://www.bop.gov/news/publications.jsp \textit{[hereinafter STATE OF THE BUREAU]} ("Sentenced inmates must work if they are medically able.").

\textsuperscript{62} Id. at 10 ("Institution work assignments include employment in areas such as food service or the warehouse, or work as an inmate orderly, plumber, painter, or groundskeeper.").

\textsuperscript{63} Id. ("Inmates earn 12¢ to 40¢ per hour for these assignments. . . . FPI work assignments pay a wage of 23¢ to $1.15 per hour; but much like the regular workforce, inmates can earn overtime and may be eligible for longevity pay.").

\textsuperscript{64} Id. ("About 17 percent of sentenced, medically able inmates (19,720) worked in Federal Prison Industries (FPI) factories at the end of FY05.").

\textsuperscript{65} MARY BOSWORTH, THE U.S. FEDERAL PRISON SYSTEM 150 (Sage Publications 2002).
produce military items; in total, FPI's sales in 2005 amounted to $765 million. As a result of this legislation, the number of prisoners laboring while in prison has greatly decreased from the numbers laboring in the nineteenth and twentieth centuries. Regardless, the same issues and concerns that framed the early debate still present a problem in today's prison working environment. We are still struggling to balance the benefits attached to prisoner labor with the very real concerns that prisoners have little power to protect themselves from exploitation while in prison. Questions still linger as to whether prison officials should be insulated from bearing responsibility if prisoners are injured from working long hours on dangerous equipment. Unfortunately, recent court rulings have held that inmates are not protected under the Eighth Amendment for injuries they might incur while engaging in prison labor. As a result, prisoners have no legal redress to be compensated for injuries, and prison officials have little incentive to provide a safe and humane working environment.

III. PRISON WORK RELATED INJURIES AND THE EIGHTH AMENDMENT

The United States Supreme Court has not considered whether inmate injuries caused by malfunctioning prison equipment fall within the domain of the Eighth Amendment. Lower federal courts have differing opinions regarding whether malfunctioning prison equipment and workplace safety cases rise to the level of an Eighth Amendment constitutional violation. These holdings range from finding no constitutional violation even when

---

66. STATE OF THE BUREAU, supra note 61 at 10 (reporting that the Iraq War has increased the demand “for military items supplied by FPI’s electronics and textiles business groups”).

67. Id. (“By law, FPI’s customers are almost entirely from the Federal Government, and much of FPI’s work is for the military—for instance, reconditioning military vehicles, and manufacturing uniforms.”).

68. Garvey, supra note 11, at 370 (reporting that 90% of the prison population worked in 1885, while only 6.2% of inmates worked in 1997).


70. Compare Arnold, 843 F. Supp. at 114 (“whether the Eighth Amendment even applies to work-related prison injuries resulting from malfunctioning equipment is questionable”) and Morgan v. Morgensen, 465 F.3d 1041, 1046 (9th Cir. 2006) (“there . . . exist[s] a conflict among other courts as to whether a prisoner could make out an Eighth Amendment claim when he alleged that a prison official ordered him to work with prison equipment that the official has been told is dangerously defective”) with Stephens v. Johnson, 83 F.3d 198, 200 (8th Cir. 1996) (“prison working conditions are subject to scrutiny under the Eighth Amendment”).
prison officials are aware of unsafe conditions,\footnote{See Arnold, 843 F. Supp. at 113 (holding that officials’ awareness of defective equipment did not constitute “the requisite ‘culpable state of mind’” to establish an Eighth Amendment violation); see also Stephens, 83 F.3d at 200 (holding that officials’ knowledge of hazardous workplace conditions did not “constitute deliberate indifference”).} to finding constitutional violations in a ‘danger-plus’ situation when more than one unsafe condition exists.\footnote{See Morgan, 465 F.3d at 1047 (9th Cir. 2006) (establishing an Eighth Amendment violation after official forced prisoner to “continue working with the defective equipment”); see also Gill v. Mooney, 824 F.2d 192, 195 (2d. Cir. 1987) (establishing a valid claim under the Eighth Amendment when official “ordered [an inmate] to continue working” on an unsafe ladder); Hoptowit v. Spellman, 753 F.2d 779, 784 (9th Cir. 1985) (establishing an Eighth Amendment violation when hazardous conditions and poor lighting in prison “seriously threaten[ed] the safety and security of inmates”).} Additionally, some courts have established a constitutional violation when one unsafe condition exists and prison officials are deliberately indifferent to inmate safety.\footnote{Ambrose v. Young, 474 F.3d 1070, 1078 (8th Cir. 2007) (holding that official who ordered inmate to “stomp out a fire burning near a dangling, live power line constituted deliberate indifference”).}

To begin, I will explain relevant Supreme Court decisions involving the Eighth Amendment in the prison context. I will then compare and contrast various standards developed by the lower courts when dealing with prisoner workplace injury cases, including the “danger-plus” standard and the “deliberate indifference” standard.

A. The Supreme Court and the Eighth Amendment as Applied to Prison Inmates

The Eighth Amendment states that “[e]xcessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.”\footnote{U.S. CONST. amend. VIII.} Not every action by government employees that affects the well-being of an inmate involves the Eighth Amendment, however. Rather, the Supreme Court has held that “only the ‘unnecessary and wanton infliction of pain’ implicates the Eighth Amendment.”\footnote{Wilson v. Seiter, 501 U.S. 294, 297 (1991) (quoting Gregg v. Georgia, 428 U.S. 153, 173 (1976).}

The Supreme Court has broadened the concept of “punishment” beyond inhumane physical punishment of inmates. In \textit{Estelle v. Gamble}, the Supreme Court acknowledged for the first time that the Eighth Amendment “could be applied to some deprivations that were not specifically part of the sentence but were suffered during imprisonment.”\footnote{Id.} \textit{Estelle} involved an inmate who alleged that prison doctors committed cruel
and unusual punishment by failing to attend to his medical needs.\textsuperscript{77} The Supreme Court held that an inmate alleging medical deprivation claims must show that the doctors were deliberately indifferent to his medical needs, and an "'inadvertent failure to provide adequate medical care' or ... a 'negligent ... diagnos[is]' simply fail to establish the requisite culpable state of mind."\textsuperscript{78}

The Supreme Court has also interpreted the Eighth Amendment to require prison officials to provide "humane conditions of confinement," including, "adequate food, clothing, shelter and medical care."\textsuperscript{79} In particular, it has stated that "'[t]he Constitution 'does not mandate comfortable prisons,' but neither does it permit inhumane ones.'\textsuperscript{80} To show that prison conditions constitute cruel and unusual punishment, an aggrieved inmate has the burden of proving a two-pronged test.

First, the inmate must show that the deprivation he suffered was, "sufficiently serious"\textsuperscript{81} under an objective standard. For instance, the Supreme Court has held that housing two inmates to one cell does not constitute an unconstitutional condition of confinement.\textsuperscript{82} Second, the inmate must show that prison officials acted or failed to act with a sufficiently culpable state of mind, or deliberate indifference.\textsuperscript{83} To establish "punishment" in the Eighth Amendment context "some mental element must be attributed to the inflicting officer."\textsuperscript{84} Likewise, rather than relying on a statutory or judge mandated definition of "punishment" the inmate's burden of proof involves a subjective standard. As Judge Friendly explains, "'[t]he thread common to all Eighth Amendment prison cases is that 'punishment has been deliberately administered for a penal or disciplinary purpose.'"\textsuperscript{85}

In \textit{Farmer v. Brennan}, the Supreme Court clarified its 'deliberate indifference' standard after various courts of appeals adopted "inconsistent

\textsuperscript{77}. \textit{See} Estelle v. Gamble, 429 U.S. 97, 101 ("The gravamen of respondent's § 1983 complaint is that petitioners have subjected him to cruel and unusual punishment in violation of the Eighth Amendment, made applicable to the States by the Fourteenth.").
\textsuperscript{78}. \textit{Estelle}, 429 U.S. at 105, 106.
\textsuperscript{80}. \textit{Id.} (quoting Rhodes v. Chapman, 452 U.S 337, 349 (1981)).
\textsuperscript{81}. \textit{Wilson}, 501 U.S. at 298.
\textsuperscript{82}. \textit{Rhodes}, 452 U.S at 368 (holding that double-celling in an overcrowded facility "ha[d] not reached the point of causing serious injury").
\textsuperscript{83}. \textit{Farmer}, 511 U.S. at 835 (noting that deliberate indifferences "entails something more than mere negligence" and "is satisfied by something less than acts or omissions for the very purpose of causing harm or with knowledge that harm will result").
\textsuperscript{84}. \textit{Wilson}, 501 U.S. at 300.
\textsuperscript{85}. \textit{Id.} at 300 (quoting Johnson v. Glick, 481 F.2d 1028, 1032 (2d Cir. 1973))
tests” while interpreting this standard.\(^{86}\) The court adopted a subjective test, holding:

[A] prison official cannot be found liable under the Eighth Amendment for denying an inmate humane conditions of confinement unless the official knows of and disregards an excessive risk to inmate health or safety; the official must both be aware of facts from which the inference could be drawn that a substantial risk of a serious harm exists, and he must also draw the inference.\(^{87}\)

The Supreme Court has not considered whether prison injuries that result from malfunctioning prison equipment should be analyzed as “conditions of confinement” cases, which normally require “the deprivation of a single, identifiable human need such as food, warmth, or exercise.”\(^{88}\) Similarly, it has not ruled on whether they even present an Eighth Amendment claim at all.

In lieu of an authoritative decision from the Supreme Court, the lower federal courts have reached varying decisions on this issue. Some state that providing a constitutional remedy for work-related prison injury cases, such as improperly functioning kitchen equipment, even when prison supervisors knew of the safety violation, would make a “mockery of the Eighth Amendment.”\(^{89}\) Others, however, acknowledge that prison safety and workplace injury cases can rise to the level of a constitutional violation, if prison officials are deliberately indifferent to the health and safety of the inmates.\(^{90}\) I will argue that those courts that have refused to acknowledge Eighth Amendment violations in cases involving malfunctioning prison equipment rely on an overly harsh interpretation of the deliberate indifference standard that strays from Supreme Court precedent.\(^{91}\)

For instance, despite the Supreme Court’s clarification that a finding of deliberate indifference requires only a showing that “the official acted or

\(^{86}\) Farmer, 511 U.S. at 836 (1994) (defining deliberate indifference as being “the equivalent of recklessly disregarding [a known] risk”).

\(^{87}\) Id. at 837.

\(^{88}\) Wilson, 501 U.S. at 304.


\(^{91}\) See Farmer, 511 U.S. at 846 (stating that an inmate must present evidence that prison officials were “knowingly and unreasonably disregarding an objectively intolerable risk of harm” to establish deliberate indifference).
failed to act despite his knowledge of a substantial risk of serious harm,"\(^9\)\(^2\) certain lower federal courts have found that workplace safety cases do not rise to the level of a constitutional violation even when prison officials were aware of safety violations.\(^9\)\(^3\)

Without a firm pronouncement from the Supreme Court, the status of malfunctioning prison equipment and workplace safety claims will remain ambiguous and the lower federal courts will be free to continue applying this overly harsh version of the deliberate indifference test. As a result, injured prison inmates have no legal recourse for their injuries and uninjured inmates working in unsafe conditions have no leverage in requesting equipment repairs.

B. Lower Federal Court Consideration of Prison Injury Cases

1. The ‘Danger-Plus’ Standard

The Ninth Circuit recently decided a case in which a prisoner’s thumb was chopped off while working on a printing press in a prison job for which he had voluntarily applied.\(^9\)\(^4\) The prisoner brought suit under 42 U.S.C. § 1983, claiming that his Eighth and Fourteenth Amendment rights were violated by his supervisor, who knew of the problem with the printing press and told the prisoner to keep working. The prison supervisor moved for summary judgment, claiming that he was entitled to qualified immunity under § 1983. The district court granted the supervisor’s summary judgment motion and the prisoner appealed. In making its decision, the Ninth Circuit relied on case law within the circuit governing prison official conduct in work related situations. Since the prison official had been warned of the defective condition of the equipment and had reason to

---

\(^9\)\(^2\). Id. at 842.

\(^9\)\(^3\). See, e.g., Bibbs v. Armontrout, 943 F.2d 26, 26 (8th Cir. 1991) (holding that prison official’s conduct did not constitute deliberate indifference); see also Warren v. Missouri, 995 F.2d 130, 131 (8th Cir. 1993) (“Even assuming that one or more defendants had knowledge of the allegedly similar prior accidents—and Warren’s proof of that was seriously deficient—this showing falls far short of creating a genuine issue of deliberate indifference to a serious issue of work place safety.”); Arnold, 843 F. Supp. at 114 (holding that inmate’s work-related prison injuries did not amount to cruel and unusual punishment under the Eighth Amendment); Stephens, 83 F.3d at 201 (holding that prison official’s actions did not amount to deliberate indifference). \textit{But see} Stephens, 83 F.3d at 201(Heany, J., dissenting) (arguing that inmate had established deliberate indifference pursuant to Supreme Court precedent).

\(^9\)\(^4\). Morgan v. Morgensen, 465 F. 3d 1041, 1044 (9th Cir. 2006) (noting that Plaintiff was urged by a prison official to keep working with the dangerously defective press).
believe that the equipment was unnecessarily dangerous, the Ninth Circuit held that the inmate’s constitutional rights had been violated.\textsuperscript{95}

The Ninth Circuit explained that the Eighth Amendment applies to the prison work context only when a prisoner-employee alleges that a prison official compelled him to “perform physical labor which [was] beyond [his] strength, endanger[ed] his life or health, or cause[d] undue pain.”\textsuperscript{96} The Ninth Circuit applied the \textit{Wilson} two-part test, stating that “[a] prisoner claiming an Eighth Amendment violation must show that (1) the deprivation he suffered was ‘objectively, sufficiently serious’ and (2) that prison officials were deliberately indifferent to his safety in allowing the deprivation to take place.”\textsuperscript{97}

In its analysis, the court relied on two other Ninth Circuit prisoner Eighth Amendment cases, \textit{Osolinski v. Kane}\textsuperscript{98} and \textit{Hoptowit v. Spellman},\textsuperscript{99} and one Second Circuit case, \textit{Gill v. Mooney}.	extsuperscript{100} In \textit{Osolinski v. Kane}, the issue for the Ninth Circuit to decide was whether “it was clearly established that prisoners had a constitutional right to have prison officials repair known safety hazards.”\textsuperscript{101} This was a “conditions of confinement” case and not a “malfunctioning equipment” case (certain courts have drawn a distinction between the two).\textsuperscript{102} The plaintiff was injured when the door to a faulty oven, located in the family visiting unit, fell off and burned his arm. Requests for maintenance had been submitted three times, with no action taken on the part of the prison. The plaintiff alleged a violation of the Eighth Amendment because the prison officials failed to fix the door despite multiple requests. The district court denied the prison officials request for summary judgment. The appellants’ basis for summary judgment relied on an affirmative defense of qualified immunity.

In order to determine whether the officials were entitled to a defense of qualified immunity, the \textit{Osolinski} Court evaluated whether the law was clearly established in 1992 that “a prison official who failed to repair a malfunctioning oven door created a sufficiently serious deprivation of a human need to violate the Eighth Amendment.”\textsuperscript{103} The court held that the

\textsuperscript{95} Id. at 1047 (“Before Morgan’s injury, the contours of this right were sufficiently clear that a reasonable prison official would or should have understood that compelling an inmate to continue operating defective and dangerous prison work equipment would violate the Eighth Amendment. Thus, Canady’s conduct was not reasonable in light of the precedent that existed at the time of the alleged violation.”).

\textsuperscript{96} Id. at 1045 (quoting Berry v. Bunnell, 39 F.3d 1056, 1057 (9th Cir. 1994)).

\textsuperscript{97} Id.

\textsuperscript{98} 92 F.3d 934 (9th Cir. 1996).

\textsuperscript{99} 753 F.2d 779.

\textsuperscript{100} Gill v. Mooney, 824 F.2d 192 (2d Cir. 1987).

\textsuperscript{101} Morgan v. Morgensen, 465 F.3d 1041, 1047 (9th Cir. 2006).


\textsuperscript{103} Osolinski, 92 F.3d at 937.
law was clearly established that a reasonable prison official would believe that failing to repair the door would not constitute a violation of the Eighth Amendment. The court’s reasoning depended upon differentiating between individual conditions that may be hazardous, and conditions that “exacerbated the inherent dangerousness of already-existing hazards.”

The Osolinski Court referenced Hoptowit v. Spellman, another Ninth Circuit case, and interpreted it as “requir[ing] a prisoner alleging Eighth Amendment violations arising out of prison safety hazards to show what might be called ‘danger-plus.’” In Hoptowit, the prisoner complained of substandard lighting, unsatisfactory plumbing, substandard fire prevention, substandard food service, vermin infestation, lack of an effective maintenance program, inadequate ventilation, safety hazards in the occupational areas, and unavailable or inadequate cell cleaning supplies.

The Hoptowit Court held that inadequate lighting conditions aggravated already dangerous occupational areas; in other words, the inadequate lighting conditions alone were not evidence of an Eighth Amendment violation. It was only when combined with another danger, such as the unsafe occupational areas, that an Eighth Amendment violation could be found, hence the idea of “danger-plus.”

Gill v. Mooney, a Second Circuit case, also considered a “danger-plus” situation. In that case, the court held that an inmate who was ordered to continue working on a defective ladder, even though the prison official knew the ladder was unsafe, stated a claim for an Eighth Amendment violation. The court found that the crucial difference was that “the order to remain on the ladder . . . exacerbated the inherent dangerousness of the defective ladder, rendering the ladder a serious safety hazard.”

The Ninth Circuit in Morgan considered its case to be similar to Gill, in that an inmate alerted his supervisor to dangerous or defective work equipment and the supervisor told the inmate to continue working anyway. The court held that based upon the decisions in Osolinski and

104. See id. at 939 (concluding that the appellants were entitled to qualified immunity as reasonable prison official would not have believed that failure to repair the oven would constitute an Eighth Amendment violation).
105. Id. at 938.
106. Morgan, 465 F.3d at 1047 (summarizing the Osolinski decision).
107. See Hoptowit v. Spellman, 753 F.2d 779, 783 (9th Cir. 1985) (reviewing the district court’s findings of the penitentiary’s conditions).
108. Id.
110. Id.
111. Osolinski, 92 F.3d at 939.
112. See Morgan, 465 F.3d at 1047 (comparing Gill v. Mooney to the case at hand as examples of “danger-plus”).
Hoptowit, the law in the Ninth Circuit was clearly established that "a safety hazard in an occupational area, the dangerousness of which is exacerbated when a prison official orders a prisoner to continue working with it after the prisoner raised a concern about whether it was safe to do so, constituted a violation of the prisoner's Eighth Amendment rights."\footnote{113}

2. Decisions Questioning the Constitutionality of Prison Workplace Injuries

In *Arnold v. South Carolina Department of Corrections*, a prisoner was injured when a twenty-five gallon pot of boiling water tipped over and severely scalded him.\footnote{114} The inmates alleged that it was common knowledge in the prison that the steam pot was broken, and inmates had attempted to stabilize the pot through makeshift safety measures.\footnote{115} Inmates told prison officials about the condition of the pot and were told "they did not have time to fix the steam pot because they had over a thousand . . . inmates to feed."\footnote{116}

The district court analyzed whether the Eighth Amendment applied to malfunctioning prison equipment cases. Supreme Court decisions made it clear that "only those violations denying 'the minimal civilized measure of life's necessities' are sufficiently grave to form the basis of an Eighth Amendment violation."\footnote{117} Also, "extreme deprivations are required to make out a conditions-of-confinement claim" and "malicious and sadistic use of force" is required to make out an excessive force claim.\footnote{118}

After applying the two-pronged test outlined in *Wilson*, the court held that: (1) prison officials did not have the culpable state of mind required because Arnold could show only negligence; and (2) the deprivation was not sufficiently serious.\footnote{119} The *Arnold* court explained that the Eighth Amendment was created to deter "torture and barbarous punishment."\footnote{120} To allow the Eighth Amendment to cover what the court considered to be mere negligence would be "to give constitutional recognition to run-of-the-mill negligence actions."\footnote{121} The court stated, "to convert conduct that does not even purport to be punishment into 'cruel and unusual punishment'
defendants must demonstrate more than ordinary lack of due care for the prisoner's interests or safety."^{122}

Unlike Morgan v. Morgensen, the Arnold court also held that even if there was an Eighth Amendment violation, prison officials were covered by qualified immunity.^{123} 42 U.S.C. § 1983 grants immunity to government officials if they can show that their "conduct [did] not violate clearly established statutory or constitutional rights of which a reasonable person would have known."^{124} The court stated that because they did not find any cases in which malfunctioning prison equipment that caused injury supported a civil rights claim, "[i]t can hardly be said that any reasonable person would have known that failure to repair a steam pot would clearly constitute cruel and unusual punishment,"^{125} and thus, the prison officials were covered by qualified immunity.

Several other courts have held that malfunctioning prison equipment cases, "even where prison officials are alleged to have known of them, do not rise to the level of a constitutional violation."^{126}

For example in Bibbs v. Armontrout, a prisoner was working in a license plate plant and lost two fingers after they got caught in the gears of the machine.^{127} The protective guards covering the gears had been removed. The prisoner argued that the prison officials knew of the "dangerous condition of the inker . . . and . . . were guilty of . . . reckless indifference to [the inmate's] safety."^{128} The court held that the prisoner was claiming only negligence on the part of the guards and dismissed the claim.

In Warren v. Missouri, an inmate's wrist was broken after an industrial table saw he was operating malfunctioned.^{129} The inmate alleged that prison officials acted with deliberate indifference by not equipping the machine with safety features, after receiving knowledge that other prisoners had been similarly injured. The prisoner presented evidence of twenty one other injuries.^{130} The court held that even if officials had knowledge, there was not deliberate indifference "to a serious issue of work place safety."^{131} In Stephens v. Johnson, prison inmates alleged a violation of their Eighth Amendment rights because of unsafe working conditions in the

---

122. Id. (referring to Whitley v. Albers, 475 U.S. 312, 319 (1986)).
123. Id.
124. Id. at 114 (quoting Johnson v. Boreani, 946 F.2d 67, 69 (8th Cir. 1991)).
125. Id. at 114.
126. Id. at 112.
128. Id. at 27.
129. Warren v. Missouri, 995 F.2d 130 (8th Cir. 1993).
130. Id. at 131.
131. Id.
prison warehouse. The Eighth Circuit overturned the district court’s decision in the inmate’s favor and held that the inmates failed to establish an Eighth Amendment violation because they could not establish that prison officials were deliberately indifferent to their health and safety.

As stated in the dissent:

[Inmates testified at length about unsafe warehouse conditions including: inmates were routinely lifted up on the bare forks of the forklift and moved around the warehouse while in that position; furniture and other heavy items were precariously stacked to the ceiling overhanging high-traffic areas; forklifts and trucks had defects including nonworking brakes, broken lifts, and no warning devices; inmates were required to climb onto high shelves to retrieve objects; inmates were required to move large furniture using dollies too small for the job and without safety straps; inmates were required to lift objects too heavy for their physical ability; lack of safety equipment such as hard hats, protective eyewear . . . ; inmates had no access to drinking water except at the bathroom sink; and inmates did not receive safety training or instruction on proper lifting techniques. In addition, the inmates described an atmosphere in which supervisors constantly demanded that the inmates work very quickly, make do with whatever materials were (or were not) available to assist them, and not complain.]

Despite the prison official’s testimony that he regularly inspected the warehouse, was aware of the safety violations and had corrected a few of them, the Eighth Circuit still overturned the jury’s finding that the prison official “had a subjective awareness of the unsafe warehouse conditions and . . . he could have taken precautions to correct them.” Instead, the Eighth Circuit held that “mere negligence or inadvertence is insufficient to constitute deliberate indifference” and that “even assuming that Campbell was aware of the safety problems at the warehouse, such a showing falls short of creating a genuine issue of deliberate indifference to workplace safety.”

In all the cases described above, prison officials were aware of the dangerousness of the situations and failed to make changes that could have prevented prisoner injuries. In Farmer v. Brennan, the Supreme Court addressed the concern that the subjective ‘deliberate indifference’ standard “might permit prison officials to ignore obvious dangers to inmate health

133. Id.
134. Id. at 202 (dissenting opinion).
135. Id. at 202.
136. Id. at 200 (referring to Choate v. Lockhart, 7 F.3d 1370, 1374 (8th Cir. 1993)).
137. Id. at 201.
and safety.’” The Court explained that prison officials cannot ignore obvious dangers to inmates and held that it is enough for an inmate to show that “the official acted or failed to act despite his knowledge of a substantial risk of serious harm.” The court explained that:

whether a prison official had the requisite knowledge of a substantial risk is a question of fact subject to demonstration in the usual ways, including inference from circumstantial evidence, and a factfinder may conclude that a prison official knew of a substantial risk from the very fact that the risk was obvious.

Despite this standard, however, the courts in Bibbs, Arnold, Warren, and Stephens still held that inmates who could show that (1) officials knew that a license plate machine’s gears were not covered by a safety guard and yet did not fix the machine, (2) officials knew that multiple inmates had been injured on a table saw with no safety devices in place and did not fix the table saw, (3) officials knew that inmates were working in a factory with multiple safety violations and did not remedy all of those violations, and (4) officials knew that a twenty-five gallon steam pot was faulty and failed to fix the pot because there wasn’t enough time, still fell “far short of creating a genuine issue of deliberate indifference.” Despite the Supreme Court’s clarification in Farmer, the version of the “deliberate indifference” standard applied by the lower federal courts in these cases seem to require not only that an officer have knowledge of a safety risk and fail to act, but also make some greater showing of indifference beyond what has been defined in Farmer. The application of such an onerous standard for inmate workplace safety violations is inequitable and inconsistent with Supreme Court precedent.

By characterizing such injuries as mere “negligence” these courts have overlooked an essential element of power in the relationship between captor and captive. The image of prisoners walking along the road in chain gangs is seared in our national consciousness as evidence of the dangers

138. See Stephens, 83 F.3d at 202 (referring to the Supreme Court’s holding in Farmer v. Brennan).
140. Id.
141. See Bibbs v. Armontrout, 943 F.2d 26 (8th Cir. 1991).
142. See Warren v. Missouri, 995 F.2d 130 (8th Cir. 1993).
143. See Stephens, 83 F.3d 198.
145. Warren, 995 F.2d at 131.
146. Farmer, 511 U.S. at 842.
147. See generally Stephens, 83 F.3d at 202 (dissenting opinion).
149. Jacobs, supra note 16, at 270 (noting that hard labor programs in prisons are given tough scrutiny by courts and mass media).
that exist when prisoners and captors relate to one another as employees and employers without the benefit of regulations protecting the employee from exploitation. As the Supreme Court has stated, "[i]ncarceration itself renders prisoners dependent upon their keepers and ‘strips them of virtually every means of self-protection.’"  

The situation that exists in the United States today is ripe with opportunity for prisoner abuse. By making it very difficult for malfunctioning prison equipment cases to succeed as Eighth Amendment violations, prisoners have few options to challenge the practices of the prison or receive redress for their injuries. Also, the very existence of confusion over the constitutionality of malfunctioning prison equipment cases provides prison officials with an easy excuse to avoid responsibility for prisoner injuries. If the constitutional right is not clearly established, prison officials will be granted qualified immunity, and thus will have little incentive to take extra time to correct safety hazards. Is this the type of behavior we want to shield from constitutional protection?

IV. THE AVAILABILITY OF WORKERS’ COMPENSATION AS A REMEDY

In Arnold v. South Carolina Dep’t of Corrections, the District Court of South Carolina stated that instead of pursuing a remedy through an Eighth Amendment violation, the proper avenue of relief for the injured inmate was through South Carolina’s workers’ compensation benefits. The federal government provides the possibility of workers’ compensation benefits to "inmates employed in any industry, or performing outstanding services in institutional operations, and compensation to inmates or their dependents for injuries suffered in any industry or in any work activity in connection with the maintenance or operation of the institution in which the inmates are confined." However, compensation is not guaranteed. It may be denied for "an injury that was sustained willfully or with the intent to injure another individual, or for an injury resulting from a ‘willful violation of rules and regulations.’"

Also, the availability of workers’ compensation at the state level varies widely from state to state. The issue of whether the state owes compensation to a prisoner (who is forced to work while in custody) if the

---

151. Arnold, 843 F. Supp. at 113 n.2.
153. Bagola v. Kindt, 131 F.3d 632, 634 n.2 (7th Cir. 1997) (quoting 28 C.F.R. § 301.301(d) (1990)).
prisoner is injured has been confronted by the states in a wide variety of ways.\textsuperscript{154}

Very often, states explicitly exclude prisoners from their workers' compensation statutes.\textsuperscript{155} For instance, the Texas Labor Code states that prisoners are not considered employees, unless they are in a work program that contracts their labor out to private businesses.\textsuperscript{156} In Vermont, prisoners and wards of the state are excluded from the term "public employment" in the state workers' compensation statute.\textsuperscript{157}

Many states do not specifically mention prisoners or inmates in their statutes, leaving the decision up to courts.\textsuperscript{158} Arkansas,\textsuperscript{159} Colorado,\textsuperscript{160} and

\textsuperscript{154} Barnard v. State, 642 A.2d 808, 812 (Del. Super. Ct. 1992) ("Other States have confronted the issue of whether an inmate who is injured while working for the State who holds him in custody is covered by workmen's compensation, with widely varying results. IC ARTHUR LARSON, THE LAW OF WORKMEN'S COMPENSATION, § 47.31 (1991). The multitude of cases that address this issue and the variety of legislative and judicial response to it attest to the inherent dilemma created by a government policy encouraging prisoners to work during their incarceration but refusing to make restitution to them for on-the-job injuries.").

\textsuperscript{155} See, e.g., TEX. LAB. CODE ANN. § 501.024 (Vernon 2006) ("The following persons are excluded from coverage as an employee under this chapter . . . (3) a prisoner or inmate of a prison or correctional institution, other than a work program participant participating in a Texas Correctional Industries contract described by Section 497.006, Government Code."); MO. ANN. STAT. § 287.090 (West 2005) ("This chapter shall not apply to . . . (3) Employment where the person employed is an inmate confined in a state prison, penitentiary or county or municipal jail, or a patient or resident in a state mental health facility, and the labor or services of such inmate, patient, or resident are exclusively on behalf of the state, county or municipality having custody of said inmate, patient, or resident.") Nothing in this subdivision is intended to exempt employment where the inmate, patient or resident was hired by a state, county or municipal government agency after direct competition with persons who are not inmates, patients or residents and the compensation for the position of employment is not contingent upon or affected by the worker's status as an inmate, patient or resident."); MASS. ANN. LAWS ch. 152, § 74 (LexisNexis 2000) ("Sections sixty-nine to seventy-five, inclusive, shall apply to all laborers, workmen and mechanics in the service of the commonwealth or of such county, city, town or district under any employment or contract of hire, expressed or implied, oral or written, including those employed in work done in performance of governmental duties as well as those employed in municipal enterprises conducted for gain or profit. Said sections shall not apply to inmates of institutions performing labor under sections forty-eight to seventy-seven, inclusive, of chapter one hundred and twenty-seven.").

\textsuperscript{156} TEX. LAB. CODE ANN. § 501.024 (Vernon 2006) ("The following persons are excluded from coverage as an employee under this chapter . . . (3) a prisoner or inmate of a prison or correctional institution, other than a work program participant participating in a Texas Correctional Industries contract described by Section 497.006, Government Code.").

\textsuperscript{157} VT. STAT. ANN. tit. 21, § 601(12)(O) (Supp. 2007) ("[T]he term "public employment" shall not include the following: . . . (iii) prisoners or wards of the state.").

\textsuperscript{158} See e.g., ARK. CODE ANN. § 11-9-102 (Supp. 2007) (failing to mention prisoners or inmates in statute); CONN. GEN. STAT. § 31-275 (Supp. 2007) (failing to mention prisoners or inmates in statute); COLO. REV. STAT. § 8-40-201 (2006) (failing to mention prisoners or inmates in statute).
Connecticut\textsuperscript{161} do not reference inmates in any way in their workers' compensation statutes. The traditional argument supporting the idea that inmates are not employees is that a person who is forced to work, "whether by statutory mandate or by a custodial supervisor's direction,"\textsuperscript{162} does not enter into a voluntary contract for his work, and therefore an employee/employer relationship cannot exist.\textsuperscript{163} For instance, in Tennessee, the workers' compensation statute does not explicitly mention prisoners or inmates,\textsuperscript{164} however; case law establishes that an inmate who performed work for the county while imprisoned, did not enter into a contract for hire, and therefore, could not be considered an "employee."\textsuperscript{165} In Alabama, an inmate who participated in a work release program was held not to be an employee within the Workers' Compensation Act because the inmate was not directly paid wages, but rather his wages were paid directly to the Department of Corrections.\textsuperscript{166} Also in Alabama, a prisoner who was injured while working as "trusty" was held not to be an "employee" under the workers' compensation statute because he volunteered to work, and he was not paid wages by the city.\textsuperscript{167}

Certain states do provide coverage for prisoners, but only in specific situations. In Arizona, a prisoner was considered an employee for compensation under the Workmen's Compensation Act when his services were loaned by the jail to a private corporation; however, he was only

\textsuperscript{159.} See ARK. CODE ANN. \textsection 11-9-102 (Supp. 2007) (failing to mention prisoners or inmates in statute).

\textsuperscript{160.} See COLO. REV. STAT. \textsection 8-40-201 (2006) (failing to mention prisoners or inmates in statute).

\textsuperscript{161.} See CONN. GEN. STAT. \textsection 31-275 (West Supp. 2007) (failing to mention prisoners or inmates in statute).


\textsuperscript{163.} See Barnard, 642 A.2d at 813 ("The traditional analysis goes like this: a person who works but is not an employee within the statutory meaning of the word is not covered under workmen's compensation laws; that is, when the State has no choice but to hire an inmate who chooses to work and who is found fit to do so, or if the inmate is required to work either by statutory mandate or by a custodial supervisor's direction, there is no voluntary contract, no employer/employee relationship, no issue. Under those circumstances, the result is simple.").

\textsuperscript{164.} See TENN. CODE ANN. \textsection 50-6-102 (1999) (failing to mention prisoners or inmates in statute).

\textsuperscript{165.} See, e.g., Howard v. Uselton, 774 S.W.2d 925, 925 (Tenn. 1989) (holding "that [an] inmate was not an employee for purposes of entitlement to workers' compensation benefits ...."); Abrams v. Madison County Highway Dep't, 495 S.W.2d 539, 539 (Tenn. 1973) (holding that inmate who was injured while working was not an employee within the workmen's compensation statute and therefore not entitled to benefits).

\textsuperscript{166.} See Gober v. Ala. Dep't of Corr., 871 So. 2d 838, 838 (Ala. Civ. App. 2003) (holding that inmate was not an employee within meaning of the Workers' Compensation Act).

\textsuperscript{167.} See Lanford v. City of Sheffield, 689 So. 2d 176, 177 (Ala. Civ. App. 1997) (holding that prisoner was not an employee for workers' compensation purposes).
considered an employee while under the direction and control of the corporation.\textsuperscript{168} In California, an employee includes: "All persons incarcerated in a state penal or correctional institution while engaged in assigned work or employment as defined in paragraph (1) of subdivision (a) of Section 10021 of Title 8 of the California Code of Regulations, or engaged in work performed under contract."\textsuperscript{169} In Delaware, an inmate who is in the custody of the Department of Corrections or who participates in a work release program is not considered an employee for workers' compensation purposes unless the inmate is employed by an employer other than the state.\textsuperscript{170}

Iowa provides inmates with workers' compensation benefits, but only those in county jail.\textsuperscript{171} Maine excludes prisoners from the definition of employee except if the prisoner is in a county jail "under final sentence of 72 hours or less and is assigned to work outside of the county jail," is employed privately, is participating in a work release program, or a few

\begin{itemize}
\item \textsuperscript{169} CAL. LAB. CODE § 3351(e) (West 2003).
\item \textsuperscript{170} See DEL. CODE ANN. tit. 19, § 2301(10) (2006) (stating position on inmates and workers' compensation); see also Barnard, 642 A.2d at 808 (holding that an inmate who severed a finger while working at an off-grounds program should be considered an employee for workers' compensation purposes).
\item \textsuperscript{171} IOWA CODE ANN. § 85.62 (West Supp. 2007) ("The county board of supervisors of any county may elect to include as an employee for purposes of this chapter any person confined as an inmate in a county jail or confined in any other facility in lieu of confinement in a county jail. If such election is made, the provisions of section 85.1, subsection 6, shall apply to such county. If an inmate in the performance of the inmate's work in connection with the maintenance of a county jail or other local facility, or in connection with any industry maintained therein, or with any highway or public works activity outside a county jail or other local facility sustains an injury arising out of and in the course thereof, the inmate shall be awarded and paid compensation at the minimum rate as provided in this chapter. If death results from such injury, death benefits shall be awarded and paid to the dependents of the inmate. If any such person is awarded weekly compensation under the provisions of this section and is still committed to the county jail or other facility, the inmate's compensation benefits under section 85.33 or section 85.34, subsection 1, shall be paid to the county for so long as the inmate shall remain so committed. Weekly compensation benefits awarded pursuant to section 85.34, subsection 2, shall be held in trust and paid to such person as provided in this chapter upon final discharge or parole, whichever occurs first. In the event such person is recommitted to the county jail or other facility prior to receiving in full, the inmate's weekly benefits pursuant to section 85.33 or section 85.34, subsection 1, such benefits shall again be paid to the county for so long as the inmate shall remain so recommitted. Also, weekly benefits under section 85.34, subsection 2, shall be suspended and again held in trust until such person is again released by final discharge or parole, whichever first occurs. However, the workers' compensation commissioner may, if the commissioner finds that dependents of the person awarded weekly compensation pursuant to section 85.33 or section 85.34, subsections 1 and 2, would require welfare aid as a result of terminating the compensation, order such weekly compensation to be paid to a responsible person for the use of the inmate's dependents.").
\end{itemize}
other exceptions. In Florida, workers' compensation benefits are extended to those prisoners who are performing services for private employers and also those who are required to participate in a work program, who volunteers for a work program, who "enters into the pretrial intervention program," or who works for the victim, for either monetary restitution or for rehabilitation purposes. In Georgia, inmates are only considered employees if they are employed for private gain or if the municipality or county voluntarily institutes a policy. In the District of Columbia, all inmates who participate in a Bureau of Justice Assistance Private Sector Prison Industry Enhancement Certification Program are eligible for workers' compensation benefits.

Even if the state provides inmates with workers' compensation benefits, there are often many conditions surrounding the circumstances in which the injury occurred. For instance, in California, benefits do not apply if the inmate was injured in an assault in which he or she was the

172. ME. REV. STAT. ANN. tit. 39-A, § 102(11)(E) (2001) ("Employee' does not include any person who is a sentenced prisoner in actual execution of a term of incarceration imposed in this State or any other jurisdiction for a criminal offense, except in relation to compensable injuries suffered by the prisoner during incarceration and while the prisoner is: (1) A prisoner in a county jail under final sentence of 72 hours or less and is assigned to work outside of the county jail; (2) Employed by a private employer; (3) Participating in a work release program; (4) Sentenced to imprisonment with intensive supervision under Title 17-A, section 1261; or (5) Employed in a program established under a certification issued by the United States Department of Justice under 18 United States Code, Section 1761.").

173. FLA. STAT. ANN. § 440.02(17)(c) (West Supp. 2007) ("Employment does not include services performed by or as: . . . 5. State prisoners or county inmates, except those performing services for private employers or those enumerated in s. 948.036(1).")

174. FLA. STAT. ANN. § 948.036(1) (West Supp. 2007) ("Whenever an offender is required by the court to participate in any work program under the provisions of this chapter, enters into the pretrial intervention program pursuant to s. 948.08, or volunteers to work in a supervised work program conducted by a specified state, county, municipal, or community service organization or to work for the victim, either as an alternative to monetary restitution or as a part of the rehabilitative or community control program, the offender shall be considered an employee of the state for the purposes of chapter 440.").

175. See GA. CODE ANN. § 34-9-1(2) (2004) ("Inmates or persons participating in a work release program, community service program, or similar program as part of the punishment for violation of a municipal ordinance pursuant to Code Section 36-32-5 or a county ordinance or a state law shall not be deemed to be an employee while participating in work or training or while going to and from the work site or training site, unless such inmate or person is employed for private gain in violation of Code Section 42-1-5 or Code Section 42-8-70 or unless the municipality or county had voluntarily established a policy, or on or before January 1, 1993, to provide workers' compensation benefits to such individuals.").

176. See D.C. CODE ANN. § 32-1503(e) (LexisNexis 2001) ("The requirements of this chapter shall apply with regard to the nonprisoners employed in a prison industries program operating on the grounds of a District correctional facility, whether within the District or elsewhere, and maintained in accordance with the Prison Industries Act of 1996. The requirements of this chapter also shall apply with regard to prisoners employed in a prison industry approved under the Bureau of Justice Assistance Private Sector Prison Industry Enhancement Certification Program as defined in § 24-231.01(1).")
“initial aggressor,”177 or if the inmate intentionally injured himself.178 The statute also states that the inmate “shall not be entitled to any temporary disability indemnity benefits while incarcerated in a state prison.”179 Also, the inmate will not begin receiving benefits until he or she is released from incarceration, and if he or she is re-incarcerated, all benefits stop.180 Many other states have the similar condition that benefits only begin after the inmate is released from incarceration, such as Iowa,181 Maryland,182 North Carolina,183 South Carolina,184 and Wyoming.185 In Iowa, however, if an inmate is injured while performing unpaid community service, benefits will be paid weekly.186 Iowa,187 North Carolina,188 and South Carolina189 also state that if an inmate is re-incarcerated, benefits stop until incarceration is completed. In South Carolina, workers’ compensation benefits do not apply “to any inmate injured in a fight, riot, recreational activity or other incidents not directly related to his work assignment.”190

V. CONCLUSION

Under the standards established by the Supreme Court for Eighth Amendment claims, prisoner malfunctioning equipment claims should be included within the gambit of the Eighth Amendment, rather than barred as “run-of-the-mill negligence actions.” The dangers inherent in mixing the captor/prisoner relationship with the employer/employee relationship have been apparent since the early days of prisoner labor in the United States. While our country has made great strides in protecting prisoners since the days of chain gangs and convict leasing, the existence of a gap in this protection threatens the principles upon which the Eighth Amendment was

178. See id.
179. CAL. LAB. CODE § 3370(a)(2) (West 2003).
181. IOWA CODE ANN. § 85.59 (West 1996 & Supp. 2007) (stating that inmates will only receive payment of benefits once the inmate has been released).
182. MD. CODE ANN., LAB. & EMPL. § 9-607(a) (West 1999) ("The Commission may not award compensation to a prisoner who is a covered employee . . . until the prisoner is discharged . . .").
183. N.C. GEN. STAT. § 97-13(c) (2005) (stating that inmates will only receive payment of benefits once the inmate has been released).
184. S.C. CODE ANN. § 42-1-480 (1985) (stating that an inmate will receive payment of benefits once the inmate has been released).
185. WYO. STAT. ANN. § 27-14-404(f) (2007) (stating that an inmate will receive payment of benefits once the inmate has been released).
187. Id.
188. N.C. GEN. STAT. § 97-13(c) (2005).
190. Id.
based. Treating prisoners as "employees" without providing the standard employee benefits/protections, while at the same time insulating the "employer" from liability for injuries that occur, creates an environment open to the possibility of exploitation and abuse. By extending the Eighth Amendment to cover situations in which a prisoner is forced to work with defective prisoner equipment and also providing basic workers' compensation benefits, this gap in protection can be closed, and an environment of accountability can be opened.