

## Workers' Compensation

Workers' compensation was the first social insurance to develop widely in the United States. In 1908, the first workers' compensation program covering certain Federal civilian employees in hazardous work was enacted. Similar laws were passed in 1911 in some States for workers in private industry, but not until 1949 had all States established programs to furnish income-maintenance protection to workers disabled by work-related illness or injury. For the next several decades, State laws expanded coverage, raised benefits, and liberalized eligibility requirements and increased the scope of protection in other ways.

Today, such laws are in effect in all the States, the District of Columbia, Guam, Puerto Rico, and the Virgin Islands. In addition, three separate programs cover longshore, harbor, and other maritime workers; Federal employees; and coal miners.

Workers' compensation laws vary widely among the States with regard to the number of weeks for which benefits may be paid and the amount of benefits payable. Payments for total disability are generally based on the worker's wages at the time of injury—usually 66-2/3% of weekly wages, up to a statutory maximum.

Workers' compensation programs are almost exclusively financed by employers on the principle that the cost of work accidents is part of production expenses. Costs are influenced by the hazards of the industry and the method used to insure for liability. A few State laws contain provisions for nominal employee contributions for hospital and medical benefits.

## Coverage

State and Federal workers' compensation laws cover the Nation's wage and salary labor force. Common coverage exemptions are domestic service, agricultural employment, and casual

labor, although some programs cover agricultural and domestic workers. Many programs exempt employees of nonprofit, charitable, or religious institutions; some limit coverage to workers in hazardous occupations.

The coverage of State and local public employees differs widely among State programs. States may provide full coverage, specifying no exclusions. Some have broad coverage, excluding only such groups as elected or appointed officials. Other programs limit coverage to public employees of specified political subdivisions or to employees engaged in hazardous occupations. In some States, coverage of government employees is optional with the State, city, or other political subdivision.

Two other major groups outside the coverage of workers' compensation laws are railroad employees engaged in interstate commerce and seamen in the merchant marine. These workers are covered by Federal statutory provisions for employer liability that give the employee the right to charge an employer with negligence. The employer is barred from pleading the common law defenses of assumed risk of the employment, negligence of fellow workers, and contributory negligence.

The programs are compulsory for most covered jobs in private industry except in New Jersey, South Carolina, and Texas. In these States, the programs are elective—that is, employers may accept or reject coverage under the law; but if they reject such coverage, they lose the customary common law defenses against suits by employees.

The programs use varying methods to assure that compensation will be paid when it is due. No program relies on general taxing power to finance workers' compensation. Employers in most programs may carry insurance against work accidents or give proof of financial ability to carry their own risks. Federal employees are protected through a federally financed and operated system.

### *Eligibility for Benefits*

Although at first virtually limited to injuries or diseases traceable to industrial “accidents,” the scope of the programs has broadened to cover occupational diseases as well. However, protection against occupational disease is still restricted because of time limitations, prevalent in many States, on the filing of claims. That is, benefits for diseases with long latency periods are not payable in many cases because most State laws pay benefits only if the disability or death occurs within a relatively short period after the last exposure to the occupational disease (such as 1-3 years) or if the claim is filed within a similar time after manifestation of the disease or after disability begins. Some programs restrict the scope of benefits in cases of dust-related diseases such as silicosis and asbestosis.

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These eligibility restrictions reflect the problems associated with determining the cause of disease. Work-related ailments such as heart disease, respiratory disorders, and other common ailments may be brought on by a variety of traumatic agents in the individual's environment. The role of the workplace in causing such disease is often very difficult to establish for any individual.

### *Types and Amounts of Benefits*

The benefits provided under workers' compensation include periodic cash payments and medical services to the worker during a period of disablement, and death and funeral benefits to the worker's survivors. Lump-sum settlements are permitted under most programs. However, a lump-sum settlement may, in some cases, provide inadequate protection to disabled workers, especially where lump-sum agreements prevent payment of future benefits (particularly for medical care) when the same disabling condition recurs. In many States, special benefits are included (for example, maintenance allowances during rehabilitation and other rehabilitation services for injured workers). To provide an additional incentive for employers to obey child labor laws, extra benefits may be provided for minors injured while illegally employed.

The cash benefits for temporary total disability, permanent total disability, permanent partial disability, and death of a worker are usually calculated as a percentage of weekly earnings at the time of accident or death—most commonly 66-2/3%. In some States, the percentage varies with the worker's marital status and the number of dependent children, especially in case of death.

All programs, however, place dollar maximums on the weekly amounts payable to a disabled worker or to survivors with the result that some beneficiaries (generally higher-paid workers) receive less than the amount indicated by these percentages. Five out of six programs have adopted flexible provisions for setting the maximum weekly benefit amounts, basing them on automatic adjustments in relation to the average weekly wage in the jurisdiction. Without these automatic adjustments, annual legislation would be required to increase the maximum weekly benefit amount; consequently, an even greater number of injured workers would fail to receive a benefit equal to the State's percentage.

Other provisions in workers' compensation programs limit the number of weeks for which compensation may be paid or the aggregate amount that may be paid in a given case, and establish waiting-period requirements. These provisions also operate to reduce the specified percentage.

Compensation is payable after a waiting period ranging from 3 to 7 days, with 3 days the most common, except in the Virgin Islands, which pays after the first full day of disability. However, for workers whose disabilities continue from 4 days to 6 weeks, the payment of benefits is retroactive to the date of injury.

## Temporary and Permanent Total Disability

A large majority of compensation cases involve temporary total injury—that is, the employee is unable to work at all while he or she is recovering from the injury, but the employee is expected to recover fully. When it has been determined that the worker is permanently and totally disabled for any type of gainful employment, permanent total disability benefits are payable. Both temporary and permanent total disability are usually compensated at the same rate.

Most programs provide for temporary disability benefits for the duration of the disability if the possibility exists for further improvement with medical treatment. But 16 programs specify payment of benefits only up to a maximum number of weeks, a maximum monetary total, or both. (See Appendix IV: Minimum and maximum benefits for temporary total disability provided by workers' compensation statutes, January 1, 1996.)

If the total injury appears to be permanent, the majority of programs provide for the payment of weekly benefits for life or the entire period of disability. A few programs reduce the weekly benefit amount after a specified period, or they provide discretionary payments after a specified time. Among the 9 programs where permanent total disability benefits are limited in duration, amount, or both, the periods range from 312 weeks to 500 weeks. Some programs provide additional payments for an attendant if one is required.

In 9 States, injured persons who are compensated for temporary and/or permanent total disability receive additional benefits for dependents. In two of these programs, such payments are made in case of temporary disability only, and in two others these allowances are only for permanent disability. The effect of these allowances in general is to increase the maximum weekly payments that a disabled worker receives. Under a few programs, however, the additional allowances are limited by the same weekly maximum benefit amount or aggregate maximum that is payable whether or not there are dependents.

## Permanent Partial Disability

If the permanent disability of a worker is only partial and may or may not lessen work ability, permanent partial disability benefits are payable—in part as compensation for the injury and ensuing suffering and handicap, and in part as compensation for a potential reduction in earning capacity. The typical law recognizes two types of permanent partial disabilities: Specific or “schedule” injuries (such as the loss of an arm, leg, eye, or other part of the body) and general or “nonschedule” injuries (such as a disability caused by injury to the head, back, or nervous system).

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Compensation for schedule injuries is generally made at the same rate as for total disability, but in a number of States it is subject to different (generally lower) dollar maximums. Compensation is determined in terms of a fixed number of weeks without regard to loss of earning power. For nonschedule injuries, the compensation is usually the percentage of the total disability payment that corresponds to the percentage of wage loss or reduction in earning capacity—that is, the difference between wages before and after impairment. Under many programs, there are limitations on the maximum amounts and/or periods of payment.

Under a majority of programs, the compensation payable for permanent partial disability is in addition to that payable during the healing period or while the worker is temporarily disabled. Additional amounts usually are allowed for disfigurement. Under some programs, no benefits are payable for permanent partial disability resulting from occupational disease; under other programs, such benefits are lower than for disability due to accidental injury.

### Death Benefits

Generally, compensation related to earnings and graduated by the number of dependents is payable to the survivors of workers who die from work injury. Thirty-five programs, including those covering Federal employees and longshore and harbor workers, provide weekly or monthly death payments to the spouse for life or until remarriage (regardless of the spouse's age at the time of the death of the worker). All programs provide payments to children until age 18 or later if they are incapacitated or are students.

All the programs provide for payment of burial expenses subject to a specified maximum amount that ranges from \$800 to \$6,000.

### Medical Benefits

All compensation programs require that medical aid be furnished to injured workers without delay, whether or not the injury entails work interruption. This care includes first-aid treatment, physician services, surgical and hospital services, nursing care, medical drugs and supplies, appliances, and prosthetic devices. Medical aid is furnished without a limit on time or amount, except in six jurisdictions.

Under most programs, the employee has the right to designate the physician, although in some cases the physician must be chosen from a list prepared by the State agency or by the employer. Under others, the employer has the right to select the physician. In several States where the worker may choose the physician, the administering agency has the authority to require a change of physician, and, in some States where the worker may not make

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the original choice, the employee may choose his or her own physician after a specified period.

In practice, the employer's right to designate the physician may be transferred to the insurance company that carries the risk for medical care and compensation. Some employers provide the medical services directly, even though they are insured for cash compensation costs. Others are self-insured for medical services and cash benefits. First aid and, less commonly, hospital facilities may be provided by the employer at the place of employment.

Because medical care is generally provided by physicians in private practice on a fee-for-service basis, the programs commonly contain provisions restricting the responsibility of the employer (or insurer) to such charges as generally prevail in the community for treating persons who are of the same general economic status as the employee and who pay for their own treatment. State programs may also provide for use of medical fee schedules and managed medical care plans.

### Offset Provisions

Disabled workers may be eligible for benefits under both workers' compensation and the Social Security Disability Insurance (DI) program. The total amount of benefits that can be received is limited by the 1965 Amendments to the Social Security Act. Under these provisions, the DI benefit (and in family benefits based on the worker's earnings record) may be reduced for any month to fully or partially offset a worker's compensation benefit received for the same month. This reduction is made only if the total benefits payable to the worker (and dependents) under the Social Security Act, plus those paid to the worker as workers' compensation, exceed the higher of 80% of his or her "average current earnings" before onset of disability or the family's total Social Security benefit before reduction. The DI benefit will not be reduced if the workers' compensation law provides for the reduction of that benefit when he or she is entitled to DI benefits, if such provision was in effect as of February 1981. Federal Black Lung benefits are not reduced due to receipt of DI benefits, but are reduced to the extent that workers' compensation benefits, attributable to the same disease, are being paid. Workers' compensation benefits may be reduced because of receipt of Social Security benefits other than for disability, unemployment insurance, or disability benefits under private plans.

### Financing

Workers' compensation programs are almost exclusively financed by employers based on the principle that the cost of work-related accidents is a business expense.

The employer's cost of protecting workers varies with the risk involved and is influenced primarily by such factors as the

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employer's industrial classification and the hazards of that industry, sometimes modified by the employer's experience rating. The premium rate an employer pays in a given State, compared with the premium rate for the same industrial classification in another State, also reflects the level of benefits provided in a given jurisdiction. Costs are also influenced by the method used to insure for compensation liability—through a commercial carrier, through an exclusive or competitive State fund, or through self-insured—and the proportion of the employer premium assigned to acquisition costs and costs for services and general administration.

In three-fourths of the States, State costs of administering the workers' compensation laws and supervising the operations of the insurance medium—private carriers, the self-insured, or State funds—may be provided through assessments on insurance carriers and self-insurers (including premium receipts in States with exclusive State funds). In the remaining States, administrative costs are derived from either general revenues or a combination of general revenues and assessments.

### Administration

State workers' compensation laws generally are administered by commissions or boards created by law. Court administration exists in three States with limited administrative activities performed by an administrative unit. The Federal provisions are administered by the Office of Workers' Compensation Programs of the Department of Labor, except for part of the Black Lung program that is administered by the Social Security Administration (SSA).

Generally, State administrative agencies supervise, adjudicate, and enforce payment of obligations and compliance with the laws. This is often carried out by boards or commissions. However, in States that maintain exclusive State funds, tasks of administration are merged with those of providing the insurance protection—that is, setting rates, collecting premiums, and paying benefits.

The programs may require reports by employers of all work-related accidents or injuries; or they may require such reports only if medical care beyond first aid is required, if time is lost after the day of the accident, or if compensation is to be paid. Time limits for employee notice to employers of injury are set, as well as time limits for filing claims for compensation. The deadline is commonly not longer than 1 year or 2 years after the injury, onset of disability, or death. These are extended under certain conditions, particularly with regard to occupational diseases.

Under most programs, the employer or the carrier, when notified of the injury, is required to begin the payment of compensation to the worker or his or her dependents. The injured worker does not have to enter into an agreement and need not sign any papers before compensation starts. The law specifies the amount a worker should get. If the worker fails to receive that amount, the administrative agency can step in, investigate the matter, and correct any

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error. In many cases, however, these provisions have not been actively enforced.

Under some programs, uncontested cases are settled by agreement among the employing firm, its insurance carrier, and the worker before payments start. Further, the agreement must be approved by the administrative agency under a few of the laws. In contested cases, most workers' compensation laws are adjudicated through hearings before an administrative body that usually has exclusive jurisdiction over the determination of facts; appeals to the courts usually are limited to questions of law.

### Rehabilitation

Workers' compensation programs provide for physical rehabilitation when needed. In addition, most workers' compensation laws contain special provisions for retraining, education, and job placement and guidance to help injured workers find suitable work.

In most of the programs, payments for food, lodging, and travel are provided to facilitate the vocational rehabilitation of the worker. These payments are provided through the extension of the period for which regular compensation is payable, or are in addition to the payment of indemnity benefits, sometimes with time limitations.

In addition to any special rehabilitation benefits and services provided under the workers' compensation laws, an injured worker may be eligible for the services provided by the Federal-State program of vocational rehabilitation. This program is operated by the State divisions of vocational rehabilitation and applies to disabled persons whether or not the disability is work connected. The services rendered include medical examination, medical and vocational diagnosis, counsel and guidance in selecting a suitable job, and training for and placement in that job.

To help place injured workers in jobs and to relieve the fear of employers that their workers' compensation costs will be unduly burdened if they hire workers with disabilities, all but three States have some form of subsequent-injury or second-injury fund. When a subsequent injury occurs to a worker who has sustained a previous permanent injury, the employee is compensated for the disability resulting from the combined injuries. The current employer pays only for the last injury and the remainder of the award is paid from the second-injury fund.

The method of financing the subsequent-injury fund differs among the various programs. Generally, financing is by assessment of insurance carriers, self-insurers, or employers. In some States, an assessment is made against certain types of compensation payments.

### Black Lung Benefits

The Black Lung Benefits Program was established as part of the Federal Coal Mine Health and Safety Act of 1969. It provides

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monthly cash benefits to coal miners who are totally disabled by pneumoconiosis (black lung) contracted as a result of employment in and around the Nation's coal mines. Benefits are payable to a worker's dependents or to the survivors of a worker who has died as a result of this disease. A coal miner is considered to be totally disabled if unable to engage in comparable and gainful work by reason of pneumoconiosis that has lasted or can be expected to last for 12 months or to result in death.

The Social Security Administration (SSA) generally exercises jurisdiction over all black lung claims filed by miners from enactment of the law through June 1973 and, therefore, pays monthly benefits to a declining number of people. The Department of Labor (DOL) has primary responsibility for all claims filed after June 1973. Although the DOL makes the disability determinations, the SSA field offices accept black lung applications for the DOL on a reimbursable basis.

### Black Lung (Part B) Program Data, 1996

- The total number of beneficiaries: 131,100. The beneficiaries included 21,500 miners, 85,600 widows, and 24,100 dependents.
- Total annual payments: \$654.6 million.
- Average monthly benefits for miners were \$663.80, and \$448.50 for widows.
- 96% of miners and widows were over 64 years old.
- 72% of all beneficiaries resided in five States: Pennsylvania, West Virginia, Kentucky, Virginia, and Ohio.