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## Workers' Compensation

Workers' compensation was the first form of social insurance to develop widely in the United States. It is designed to provide cash benefits and medical care when employees suffer work-related injuries or illnesses and survivor benefits to the dependents of workers whose deaths result from a work-related incident. In exchange for receiving benefits, workers who receive workers' compensation are generally not allowed to bring a tort suit against their employers for damages of any kind.

The federal government was the first to establish a workers' compensation program, covering its civilian employees with an act that was passed in 1908 to provide benefits for workers engaged in hazardous work. The remaining federal workforce was covered in 1916. Nine states enacted workers' compensation laws in 1911. By 1921, all but 6 states and the District of Columbia had workers' compensation laws.

Today each of the 50 states, the District of Columbia, Puerto Rico, and the Virgin Islands have their own program. The federal government covers its employees through its own program. It also administers the Longshore and Harbor Workers' Compensation Act, enacted in 1927, which covers longshore and harbor workers throughout the United States.

Coal miners suffering from pneumoconiosis, or "black lung" disease, are covered by the Black Lung Benefits Act of 1972, with the initial benefits enacted as part of the Coal Mine Health and Safety Act of 1969. Under this program, monthly cash benefits are payable to miners disabled by black lung disease and to their dependents or survivors. Medical benefits are also payable to the worker on the basis of a diagnosis of pneumoconiosis.

The Energy Employees Occupational Illness Compensation Program provides lump-sum payments up to \$150,000 to civilian workers (and/or their survivors) who became ill as a result of exposure to radiation, beryllium, or silica in the production or testing of nuclear weapons. This is the Part B of the program, which went into effect in July 2001. It provides smaller lump-sum payments to individuals found eligible for an award under the Radiation Exposure Compensation Act. Medical benefits are awarded for the treatment of covered conditions.

The Radiation Exposure Compensation Act of 1990 provides lump-sum compensation payments to individuals who contracted certain cancers and other serious diseases as a result of exposure to radiation released during above-ground nuclear weapons tests or during employ-

ment in underground uranium mines. The lump-sum payments are specified in law and range from \$50,000 to \$100,000.

### Coverage

In 2004, state and federal workers' compensation laws covered about 125.9 million employees. Covered payroll in 2004—that is, total wages paid to covered workers—was \$4.95 trillion.

Common exemptions from coverage are domestic service, agricultural employment, small employers, and casual labor. However, 39 programs have some coverage for agricultural workers, and 25 programs have some coverage for domestic workers.

Many programs exempt employees of nonprofit, charitable, or religious institutions. The coverage of state and local public employees differs widely from one state program to another.

The workers' compensation programs are compulsory for most private employment, except in Texas, where it is elective. That is, in Texas, employers may accept or reject coverage under the law. If they reject it, they lose the customary common-law defenses against suits by employees in private industry.

Two groups outside the coverage of workers' compensation laws are railroad employees engaged in interstate commerce and seamen in the U.S. Merchant Marine. These workers have health insurance and short-term and long-term cash benefit plans that cover disabilities whether or not the conditions are work-related. In addition, under federal laws these workers retain the right to bring tort suits against their employers for negligence in the case of work-related injuries or illness.

### Benefits

The benefits provided under workers' compensation include periodic cash payments and medical services to the worker during the period of disablement for the disabling condition. They also include death and funeral benefits to the workers' survivors. Lump-sum settlements are permitted under most programs.

Approximately three-fourths of all workers' compensation cases involve only medical benefits. Cash wage replacement benefits are categorized according to the duration and severity of the worker's disability.

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## Temporary Total Disability

Most compensation cases that involve cash payments are for temporary total disability. In these cases, the worker is temporarily precluded from performing the pre-injury job or another job with the employer that the worker could have performed before the injury. When workers' lost time exceeds the waiting period (3 to 7 days, depending on the state), they receive a percentage of their weekly wages—typically two-thirds—up to a maximum weekly amount. The maximum is generally set at some percentage of the states' average weekly wage, ranging from 66 2/3 percent to 200 percent, but typically 100 percent.

## Temporary Partial Disability

In some cases, workers return to work before they reach maximum medical improvement and have reduced responsibilities and a lower salary. In those cases, they receive temporary partial disability benefits.

## Permanent Total Disability

If a worker has very significant impairments that are judged to be permanent after he or she reaches maximum medical improvement, the worker receives permanent total disability benefits. Very few workers' compensation cases are found to have permanent total disabilities.

## Permanent Partial Disability

When the worker has impairments that, although permanent, do not completely limit the workers' ability to work, permanent partial disability benefits are paid. The system for determining benefits in these cases is complex and varies across jurisdictions. Some states provide benefits based on an impairment rating scheme. The level of impairment, often expressed as a percentage of total disability, is used to determine the benefit amount. Some states provide benefits on the basis of loss of earning capacity. They use impairment ratings with modifications based on vocational factors, such as the worker's education, job experience, and age. Other states use systems that attempt to compensate workers for actual lost wages.

## Death Benefits

Generally, compensation is related to earnings and to the number of dependents eligible as the survivors of workers who die from a work-related illness or injury.

## Medical Benefits

All workers' compensation acts require that medical aid be furnished without delay, to workers suffering from a work-related injury or illness, whether or not the condition entails work interruption. This care includes first-aid treatment, physician services, surgical and hospital services, nursing, medications, medical supplies, appliances, and prosthetic devices. Care is typically provided with no co-payment from the worker. A few state laws contain provisions for contributions by the covered employee for hospital and medical benefits.

## Financing

Workers' compensation programs are financed almost exclusively by employers and are based on the principle that the cost of work-related accidents is a business expense. Depending on state laws, employers can purchase insurance from a private carrier or state fund, or they can self-insure. No program relies on general taxing power to finance workers' compensation. Employers in most programs are permitted to carry insurance against work accidents with commercial insurance companies or to qualify as self-insurers by giving proof of financial ability to carry their own risk. In five jurisdictions, commercial insurance is not allowed. In two of these areas, employers must insure with an exclusive state fund, and in three others, they must either insure with an exclusive state insurance fund or self-insure. In 21 jurisdictions, state funds have been established that compete with private insurance carriers. Federal employees are provided protection through a federally financed and operated system.

## Program Highlights

Benefit payments under workers' compensation programs increased to \$56.0 billion in 2004, which was a 2.3 percent increase from the benefit figure of \$54.7 billion in 2003. When compared with covered wages, benefits fell by \$0.03, from \$1.16 to \$1.13 per \$100 of covered wages.

In 2004, medical benefits accounted for \$26.1 billion, and wage loss compensation accounted for \$29.9 billion. The latter amount includes payments to disabled workers and the survivors of deceased workers.

The \$56.0 billion for workers' compensation benefit payments in 2004 includes more than \$714 million in benefits for the Black Lung program. This program is described separately (see Tables 9.D1 and 9.D2).

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The employers' cost of providing workers' compensation coverage varies generally according to risk, industrial classification, and experience rating. Nationally, in 2004, such costs were approximately \$1.76 per \$100 of covered wages, or about \$694 for each of the 125.9 million protected employees.

It is the first time since 2001 that wages grew faster than benefits. Since 2001, employer costs have increased relative to covered wages.

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