

There is substantial variability in how state workers' compensation laws provide benefits to workers who have a permanent partial disability. The basic approaches used by the states can be classified into four groupings, although important differences exist within each group. Depending on the approach used, workers with similar injuries can receive substantially different amounts of benefits. Because compensating permanent partial disabilities frequently involves contention, the matters in dispute will depend on the approach used to determine benefits. The continuation of such differences in approach suggests that the states have not found a single "best practice" for determining what such benefits should be.

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Compensating Workers for Permanent Partial Disabilities

by Peter S. Barth

Summary

Workers' compensation is the nation's oldest social insurance program. There is virtually no federal role in the state workers' compensation programs. As a result, those programs provide widely different coverage, disparate benefits with different rules, and administrative practices that can be vastly dissimilar. Perhaps the greatest variability is in how the jurisdictions compensate workers for permanent disability, particularly permanent partial disability. This article explains the methods the states use to provide benefits to injured workers for permanent partial disabilities under their workers' compensation programs.

The importance of permanent partial disability cases can hardly be overstated in the context of the state programs. Permanent partial disability cases are more than one-half of all cases, typically where temporary disability has lasted more than 7 days. Cash benefits were approximately \$35,000 per claim for injuries that occurred in 1999. In some jurisdictions, many of these claims have not yet been resolved. By various criteria, interstate differences in outcomes are large in permanent partial disability claims.

Injuries resulting in permanent impairments to certain body parts are compensated in a consistent way, very broadly considered. About 43 jurisdictions use a schedule—a list of body parts that are covered. Typically, a schedule appears in the underlying statute and lists benefits to be paid for specific losses, for example, the loss of a finger. These losses invariably include the upper and lower extremities and may also include an eye. Most state schedules also include the loss of hearing in one or both ears.

Injuries to the spine that are permanently disabling are typically not scheduled, nor are injuries to internal organs, head injuries, and occupational diseases. For unscheduled conditions, the approaches used can be categorized into four methods:

- *Impairment-Based Approach.* The most common approach can be categorized as impairment based. About 19 states use this approach to compensate for an unscheduled permanent partial disability. In approximately 14 of those states, the worker with an unscheduled permanent partial disability receives a benefit based entirely on the

degree of impairment. Any future earnings losses of the worker are not considered.

- *Loss-of-Earning-Capacity Approach.* Roughly 13 states use this approach to determine the permanent partial disability benefit for an unscheduled impairment. This approach links the benefit to the worker's ability to earn or to compete in the labor market, that is, it involves a forecast of the economic impact that the impairment will have on the worker.
- *Wage-Loss Approach.* In the 10 or so states that use this method, benefits are paid for the actual or ongoing losses that a worker incurs. In some states, the permanent partial disability benefit begins after it has been determined that maximum medical improvement has been achieved. In states that use this approach, permanent disability benefits can simply be the extension of temporary disability benefits until the disabled worker returns to employment.
- *Bifurcated Approach.* In nine jurisdictions, the benefit for a permanent disability depends on the worker's employment status at the time that the worker's condition is assessed, after the condition has stabilized. If the worker has returned to employment with earnings at or near the preinjury level, the benefit is based on the degree of impairment. If the worker has not returned to employment, or has returned but at lower wages than before the injury, the benefit is based on the degree of lost earning capacity.

Introduction

Although workers' compensation is the nation's oldest social insurance program, it is less well understood than others. A contributing factor is that the laws and administration of these programs vary by state. Even practitioners, who may be familiar with the application of the law within their own states, often have little knowledge about the workings of the laws in other jurisdictions. There is virtually no federal role in the state workers' compensation programs.¹ A result is a set of state programs that provide widely different coverage, disparate benefits applying different rules, administrative practices that can be vastly dissimilar, and a lack of uniformity in terminology and in data collected and reported.

Perhaps the greatest variability is in how the jurisdictions compensate workers for permanent disability, particularly permanent partial disability. This article describes the various methods the states use to provide benefits to workers with such a condition.

State Workers' Compensation Benefits

Except for Texas, every state requires that employers provide coverage for their employees in accordance with the state's laws.² Employers obtain coverage in one of three ways.

- They may purchase insurance from carriers, either private firms or competitive state-operated insurance companies (where they exist).
- They can self-insure, subject to gaining the necessary approval from the state. Typically larger-scale employers or those who participate in a group can self-insure.
- In four states, insurance can be purchased only from a state-operated insurance company.

Every state entitles injured workers to benefits covering their medical treatment.³ In most workers' compensation cases, the sole direct costs are those for medical care. Even if the injury results in lost time, all states have a waiting period for which no wage-replacement benefits are paid.⁴ Typical waiting periods in the states are 3 or 7 days. Unlike unemployment insurance or Social Security Disability Insurance, coverage under workers' compensation begins immediately when employment begins. Once the worker's time lost from work exceeds the state's waiting period, the entitlement to cash benefits begins. In a typical case in which the time lost because of the injury exceeds the waiting period, the worker can receive a cash benefit (tax-free) that is linked to the worker's average weekly wage level. The benefit for a temporary total disability case is linked to the worker's average weekly wage, based on a formula set out in the statute. A very typical formula sets the benefit at two-thirds of the worker's average weekly wage, subject to a maximum weekly benefit.⁵ The most common basis for the maximum benefit amount is to set it at 100 percent of the state's average weekly wage.

Temporary total disability benefits cease when the worker has returned to employment at or near the preinjury wage level. Those benefits can be terminated when the worker is found medically able to return to work. Alternatively, if the worker's medical condition stabilizes and is unlikely to change, the temporary benefit will also end.⁶ State laws describe this stage as one in which the worker's condition has reached "maximum medical improvement" or has become "permanent and stationary." In addition, some jurisdictions set a ceiling on the amount of time for which these benefits need to be paid and, in a few cases, on the amount of the payment. When temporary benefits have ended, the worker may be entitled to receive benefits for permanent partial disability.⁷

Permanent Partial Disability

In most states, the most expensive category of cases are for permanent partial disability. A nine-state study that examined the costs of cases as of March 2002 for injuries that occurred in 1998–1999 found that over one-half of cases in which temporary disability lasted more than 7 days resulted in permanent partial disability in six of the nine states (Telles, Wang, and Tanabe 2004). The median cost of such cases in the nine states exceeded \$32,000. Blum and Burton (2003, Table 7A) have reported that the average amount of cash benefits paid per permanent partial disability case nationally for accident (injury) year 1999 was over \$35,000. Many permanent partial disability cases take years to resolve; in some states, a significant fraction were not closed more than 3 years after the injury date.

Delivering Permanent Partial Disability Benefits

In the case of temporary disability or death, there is a clear rationale for the payment of workers' compensation benefits, that is, to replace in some measure a worker's lost earnings. The reason for paying benefits for a permanent partial disability is, less clear, however, as is the scope of such benefits. The uncertainty surrounding the rationale for paying these benefits is evident when one examines the different manner in which states assess the degree of disability and thereby the amount of compensation to be paid. One must presume that replacing the future earnings that will be lost because of the condition is an important consideration in setting the amount of the benefit. Yet, other factors evidently serve as the basis for the amount of the benefits that a worker will receive. For example, in a few states, the amount of compensation for a permanent disability is not linked to the worker's preinjury earnings level. And in some states, an older worker can retire and then seek and receive compensation for a permanent disability that is hardly likely to affect his or her future earnings.

In a general sense, permanent partial disability benefits in the state programs can be sorted into two broad classes: individual justice and average justice. Under *individual justice*, the specific worker's circumstances are considered and are used in assessing what the economic impact of the permanent disability will be or has been on the individual. For reasons that are clear and will be more evident below, there are costs in assessing these losses, primarily from the potential for contention in arriving at such an estimate. In addition, one might question the accuracy of the estimates that emerge from a process in which the payer and the potential beneficiary have incentives to reach very different estimates. Moreover, the likely dispute is almost certain to delay deter-

mining an outcome for the parties as well as create backlogs in other areas of the dispute in the state's compensation system. Yet the individual justice approach is so fundamental in most parts of criminal and civil justice that some parties resist any effort to deny it.

By contrast, in the second class the state uses an *average justice* approach in determining the level of compensation. This approach presumes that the law can estimate a fairly typical loss associated with a permanent disability and, by treating workers with similar losses the same, can avoid incurring the costs of the individual justice approach. Implicit in the average justice approach are two assumptions: first, that we know how to identify similar workers, that is, that we understand what variables are likely to affect future earnings losses and can measure them and their impact; and second, that the variance in the errors associated with this process is not large. Putting it simply, supporters of this view seem likely to recognize that some degree of under- or over-compensation will result in cases because of individual circumstances but that the errors will not be large. Strikingly, although some recent empirical work has shed considerable light on the degree to which compensation benefits replace postinjury earnings losses, no research has been done on the extent of the variance in earnings losses for individual recipients.⁸ It seems hardly surprising to find the application of an average justice approach in workers' compensation laws. After all, an underlying principle in the origin of all state workers' compensation laws was to create a no-fault system, replacing the tort-based approach that existed before these laws were enacted. The essential *quid pro quo* of the laws was that workers lost the right to sue employers for negligence and that workers in turn would receive adequate and prompt benefits regardless of fault and without having to prove negligence on the employers' part. The use of average justice can be found in areas outside of the state workers' compensation laws.

Assessing Losses and Determining Compensation

Adding to the complexity of the delivery of permanent partial disability benefits and the difficulty in characterizing them, most jurisdictions use two types of approaches—scheduled and unscheduled—depending on the body part injured.

Scheduled Losses. About 43 jurisdictions use a schedule, or list, of body parts that are covered by it.⁹ The schedule usually appears in the underlying statute and lists benefits to be paid for specific losses. These losses invariably include the upper and lower extremities and may also include an eye. Most include the loss of hearing in one or both ears. The schedules are specific enough that they

separately identify the individual fingers or toes or differentiate between the loss of a dominant or nondominant hand. A few states include additional losses, such as an internal organ or a testicle, or actually include the back or spine.

Since the majority of states that use a schedule tie the benefits for the loss to the worker's preinjury wage, the amount of the weekly benefit is derived as a fraction of that worker's earnings. The number of weeks of benefits at this rate is taken from the schedule. Under the Virginia statute, for example, a worker who loses a thumb is awarded 60 weeks of benefits, with the weekly benefit equal to $66 \frac{2}{3}$ of the worker's average weekly wage, subject to a weekly maximum amount. If the loss of the thumb is limited to the first phalanx, the benefit is reduced to 30 weeks; if the loss is greater than the first phalanx, the benefit is the full 60 weeks. The statute adds that "amounts received for loss of more than one finger shall not exceed compensation provided for the loss of a hand" (Virginia Code Annotated 65.2-503).

States that use a schedule in this manner embody very clearly the application of average justice. The individual who loses a thumb may suffer a disastrous economic hardship (a barber) or may be expected to have no resulting loss of earnings (an economics professor), and yet they both receive the same 60 weeks of benefits.¹⁰

The application of schedules varies significantly among states. One variation is the compensation for the partial loss of a body part on the schedule. In Virginia, the statute gives some guidance. In some jurisdictions, the physical loss is directly proportional to the benefit for the loss of the entire body part, that is, the loss of 60 percent of the hand yields a benefit of 60 percent of the value of a whole hand. In other jurisdictions, however, the loss of 60 percent means that the worker is likely to receive between 60 percent and 100 percent of the benefit associated with the loss of the entire hand, depending on the anticipated economic hardship that the loss might cause.

Another variation is in the states' treatment of scheduled losses when a worker loses the use of a body part. Most states equate the loss of a hand, for example, with the loss of use of the hand. A few jurisdictions, however, differentiate between the severance of a body part and the loss of the use of that body part.

An injury that leaves a permanent disability to an unscheduled part of the body is also likely to be compensated, although the level of benefits may be determined in a very different manner. In some states, the potential benefits associated with an unscheduled disability can be substantially higher than those for a scheduled loss, which creates an incentive for the parties to dispute which part of the law covers the disability. Thus, a claimant may argue that the injury to the arm (a scheduled loss) has

had an impact on the shoulder (an unscheduled loss). The defense has an interest in limiting the benefits to those specified in the schedule.

Unscheduled Losses. Although most scheduled losses represent applications of average justice, the same cannot always be said for unscheduled disabilities. With the arguable exception of four states (Connecticut, Minnesota, North Carolina, and Virginia), jurisdictions that use schedules also provide for unscheduled losses.¹¹ Injuries that result in back impairments are typical of unscheduled claims, as are injuries to internal organs and the head and most occupational illnesses.

Before describing the different methods states use, it is important to differentiate between two terms that are sometimes used interchangeably: impairment and disability. An injury or illness, the aging process, or a chronic condition may result in an *impairment*—a physiological or psychological result that can be evaluated in medical terms. The individual may have lost some portion of his or her sight or hearing, may have limited range of motion in the back, or may have had a finger amputated. The key to understanding impairment is that the loss is thought to be best described and evaluated by medical professionals.

A *disability*, unlike an impairment, represents the socioeconomic loss that an individual sustains as a result of an injury, illness, or condition. If a worker is injured and as a result cannot ever return to work, the disability is a very serious one. Another worker, with precisely the same injury and the same degree of impairment, may be able to return to work quickly with little or no impact on his or her earnings. The injury to that worker would result in a much lower degree of disability. Disability evaluation can include some assessment of the worker by a medical professional but should also take some account of the person's occupation and employment history, education and training, and probably other demographic and labor market variables. In short, a permanent impairment need not, but is likely to, result in disability, and the same degree of impairment can result in a vastly different degree of disability for different individuals. Explicitly or otherwise, states pay permanent partial disability benefits to workers because they suffer an impairment, a disability, or some combination of the two. As noted earlier, each state's approach to compensating permanent partial disabilities differs, but for convenience the methods for compensating unscheduled losses can be put into four groups. States can use an approach based on impairment, loss of earning capacity, loss of wages, or one that combines features of the other approaches.

Impairment-Based Approach. The most common approach that states use can be categorized as impairment based. About 19 states use this approach to com-

pensate for an unscheduled permanent partial disability (Barth and Niss 1999). In most of these states (approximately 14 of the 19), the worker with an unscheduled permanent partial disability receives a benefit based entirely on the degree of impairment and the worker's preinjury wage level. The extent of impairment is usually based on an estimate provided by a medical practitioner who uses an impairment rating guide. The most commonly employed source is one of the various editions of the American Medical Association's *Guides to the Evaluation of Permanent Impairment*. In the interest of consistency, many states actually mandate which rating guide (and edition, in some cases) must be used. Even with a uniform source of reference, it is not unusual for disputes to occur over the estimated degree of impairment and, thereby, the size of the permanent partial disability benefit. Even medical raters who are not perceived as worker-friendly or pro-employer or insurer can disagree about the presence of and the extent of a permanent partial disability.

As an example of how this approach is implemented, suppose that a worker's medical condition has stabilized and that temporary disability benefits have been terminated. A medical person rates the worker, and the parties agree that the worker has a 20 percent impairment rating. A result might be that the worker will receive 60 weeks of benefits, because the statute awards 3 weeks of benefits for every point of impairment. Although the number of weeks of benefits is invariant for different workers with a 20 percent impairment rating, the weekly benefit is most commonly a function of the worker's preinjury wage, always subject to a maximum weekly benefit set by statute.

There is an important parallel between the use of a schedule for certain losses and the impairment-based approach for unscheduled conditions. In both, the state opts to use some type of average justice rather than determine the degree of disability that the injury caused a particular worker. Regardless of the labor market consequence of the worker's impairment, the benefit amount is unaffected. Under the impairment-based approach, the worker is entitled to a benefit even if the condition results in no loss of employment or earnings. Yet minor permanent impairments will result in low benefit levels, even if the disabling effects of the injury are catastrophic to the worker. Not surprisingly, this approach is especially vulnerable to the "dueling-doc syndrome," where the claimant's medical evaluator assesses a higher level of impairment than does the employer or insurer's expert or where the latter may argue that there is no permanent, work-caused impairment at all.

There are two exceptions to the strict application of the impairment-based method. First, in two states

(Colorado and Nevada), the benefit amount is adjusted to take account of a worker's age. Somewhat curiously, both states adjust benefits so that the older the worker is at the time of injury, the lower the benefit amount will be.¹² These adjustments are not very large, and it is reasonable to classify these two jurisdictions as using an impairment-based approach, even if their application of it differs from that of other states.

At least three of the impairment-based states have a more significant variation in their approach. In these states, the benefit is set strictly on the basis of the degree of impairment; however, when the weeks of permanent partial disability benefits have expired, the worker may be eligible to be considered for an additional benefit. These supplemental benefits are paid only for limited periods of time and are awarded if the worker has not returned to employment or to employment near the preinjury wage. Still, these states can be classified as impairment based. Simply put, very few workers ever receive these supplemental benefits, in part because the disabled worker may have to overcome important hurdles in the law to be eligible to receive these benefits. Most workers with permanent impairments are not sufficiently impaired to be eligible. Most workers with impairments are able to return to employment before any impairment benefits have expired, but a worker may have some loss of earnings after returning to work. Although this approach is best characterized as impairment based, it represents an attempt to provide some individual justice where the application of average justice is found to be inadequate.

Although the most common method for setting benefits is to arrive at the number of weeks of benefits, in practice there are common alternatives. The parties may agree on a lump-sum settlement that will usually include an agreement by the worker to waive any right to further indemnity or medical benefits from the employer or insurer. The amount of the lump sum may reflect some discounting for the advance payment. It may also include something that reflects the possible medical needs that the worker will continue to have. Another alternative is to use the recent practices in similar settlements as a template for the agreement. Particularly when both sides are represented by experienced attorneys, there may be an understanding of what such cases settle for.

The Loss-of-Earning-Capacity Approach. An estimated 13 states use this approach, which links the benefit to the worker's ability to earn or to compete in the labor market. One can say that this is an *ex ante* approach, that is, it is a forecast of the economic impact that the impairment will have. In the absence of empirical estimates of such losses, the parties try to reach some agreement as to what the impact on earnings will be, using some variables that may be specified in law. The

starting point is customarily the degree of impairment, with the operating premise that the more severe the impairment, the greater the potential impact on future earnings will be. The worker's occupation, work history, education, training, and age can also be important inputs into the calculation by the parties or by the agency or court charged with determining the level of disability.

In contrast to the impairment-based approach, this one appears to apply individual justice in claims for a permanent partial disability, but in practice, there are reasons why this characterization may not be correct. First, the parties may find it quicker and simpler to settle using some customary and informally determined value for an unscheduled loss rather than litigate it. Adding to the likelihood of such an outcome, many jurisdictions find their dispute resolution process severely backed up, resulting in lengthy delays before a hearing will even be held. Second, the difference between the amount that the employer or insurer is prepared to pay and the amount that the worker is prepared to accept may be small enough to discourage the parties from waging a protracted dispute.

The hallmark of this approach is that it purports to predict the impact—presumably the earnings losses—of a permanent impairment. As such, there is necessarily some uncertainty or subjectivity in estimating these losses, which can be the source of contention. Supporters of this approach can point to the individual justice that it allows. Others ask whether the approach can deliver a good prediction of future losses. Another criticism of this approach is that it may encourage workers to delay returning to employment, as a way to increase the potential permanent partial disability benefit, because a long period of temporary disability can help support the argument that the worker's future earnings prospects are poor.

The Wage-Loss Approach. In the 10 or so states that use this method to compensate for an unscheduled permanent partial disability, benefits are paid for the actual or ongoing losses that workers incur. In some states, the permanent partial disability benefit begins once it has been determined that maximum medical improvement has occurred, as described above. In some jurisdictions, however, temporary disability benefits simply continue as long as the worker has not returned to employment or can return only at reduced earnings. In seven of the states, the approach is a pure one, that is, if the worker can return to employment without any earnings loss, no permanent partial disability benefit will be paid for an unscheduled impairment. Stated differently, to receive a permanent partial disability cash benefit, the worker must demonstrate some actual loss of earnings. Since the loss of earnings that follow from a permanent

impairment can continue indefinitely, some jurisdictions establish a maximum potential duration for the payment of benefits. Alternatively, some states limit the duration of benefits if an impairment rating is below a given threshold. The duration of benefits can also be limited by ceasing entitlement when the worker reaches retirement age or by offsetting the benefits for old-age benefits paid under Social Security.

If the purpose of permanent partial disability benefits is to compensate for earnings losses resulting from an impairment, then unlike the methods based on impairment or the loss of earning capacity, this approach would appear to do precisely that. It also can be characterized as providing individual justice.

One might wonder why so few states embrace this approach. The likely answer is that this method is probably the most difficult one to administer. In particular, it is difficult to determine with certainty why a worker's income may have declined after a work injury that results in impairment. Consider the following case. After losing time because of a work injury, the worker returns to employment. Six months later, the worker becomes unemployed for any of several reasons. The worker experiences difficulty finding other employment. From the worker's perspective, this is a result of the permanent impairment, which may limit the types of employment that the worker feels qualified to take or which renders him or her less attractive to a prospective employer. A determination must be made about the degree to which earnings losses are due to the work-caused condition and how much is due to the overall state of the labor market, the worker's motivation, any preexisting condition that the worker might have, or the worker's qualifications to take alternative employment. The wage-loss approach may also serve to induce some beneficiaries to delay or postpone returning to employment. In response to this perception, some employers or insurers may seek to settle and close out cases as quickly as possible, thereby avoiding the possibility of paying permanent partial disability benefits over a long period.

The Bifurcated Approach. In nine jurisdictions, the benefit for a permanent disability depends on the worker's employment status at the time the assessment is made. If the worker has returned to employment with earnings at or near the preinjury level, the benefit is based on the degree of impairment. In most cases, the worker will receive weekly benefits—or a lump sum—that supplements current earnings from employment. However, if the worker has not been able to return to work or has returned but is earning less than before the preinjury, the worker will be rated on the basis of the loss of earning capacity. The impairment benefit that the worker would have received if he or she successfully

returned to work is the lower bound of what the disabled worker will receive.

The bifurcated approach can be thought of as a partial accommodation to using individual justice. Most workers will receive benefits based on the degree of impairment, resulting in some disparities in outcome in the future. However, some individual justice is given to those who are unable to return to preinjury earnings, at least in the short run. The benefits paid will always be higher if the worker is compensated for the loss of earning capacity in a state using a bifurcated approach. At the margin, this method can provide a financial incentive to an employer to reemploy the worker. If the employer self-insures, the lower compensation costs are a direct gain for the business. If the employer purchases insurance, as most do, and is subject to experience rating with regard to the premium that is paid, a lower compensation benefit can also give the employer an incentive to retain the worker. No such direct incentive exists for the many small employers who are not covered under experience rating.

Summary of the Four Approaches. Administering a state's permanent partial disability benefit program is challenging. Perhaps the strongest evidence of difficulties is that after about 9 decades of workers' compensation in most of the states, no single "best" approach has emerged. Systems that depend solely on impairment as a way to set benefits can run the risk of creating a serious inequity if the impairment is relatively low and the disability is severe. They may also discourage workers from obtaining prompt medical restoration until after the impairment has been rated, thereby increasing the potential cash benefit but jeopardizing the recovery of health. With few exceptions, systems that rely on schedules to pay benefits represent an approach that is similar to the impairment-based method, at least for applicable injuries. States that compensate for the loss of earning capacity, in contrast to impairment, risk encouraging litigation over the unknown, that is, the impact of the injury on the worker's future labor market experience. They may also encourage workers to delay returning to work as a way to raise the potential indemnification for the injury. The wage-loss approach is difficult to administer. It too may discourage prompt return to employment. And because the bifurcated method depends on elements of both the impairment and the disability approaches, it has the same potential vulnerabilities as those systems.

Lump-Sum Settlements. These settlements are an important fact of life in workers' compensation. All but eight states allow them to close out indemnity benefits; a dozen jurisdictions do not permit them to close the medical benefits portion of a worker's claim. Insurers prefer to close claims with such agreements rather than let them stay open and delay achieving certainty as to the

outcome, or cost, of a claim. The adage one hears frequently is that "the only good claim is a closed claim." Workers appear to prefer to take their benefits in a lump sum and put the compensation process behind them, even if some of the benefit is paid at a discounted rate. Attorneys can collect their fees more promptly and easily if the benefit is taken directly from a lump sum paid to the worker. More significant, perhaps, is that in many jurisdictions the amount that the attorney is able to charge is directly related to the size of the lump-sum payment. Thus, with insurers, workers, and their attorneys typically supportive of lump-sum settlements, their frequent use is not surprising.

Lump-sum settlements can create problems if the issue of offsets applies. For example, benefits under Social Security Disability Insurance limit the combined benefits of the two programs to 80 percent of the worker's average current earnings.¹³ The issue becomes how to account the lump-sum benefit, net of attorney fees, for purposes of the offset, where a portion of the settlement represents an amount to pay for future health care costs associated with the injury. In the past, some workers were advised to treat a sizable portion of the settlement as a payment for future medical costs so that the offset would be established against a smaller amount of the lump sum. However, this tactic is no longer without some financial risks for the recipient. After a 2-year period, the Social Security Disability Insurance beneficiary is entitled to receive Medicare benefits, and the Medicare program will now consider medical benefit settlement amounts to the first payer when the worker incurs treatment for the condition for which the compensation was paid.

Notes

¹ The Department of Labor does operate four workers' compensation programs—the Federal Employees Compensation Act, the Longshore and Harbor Workers' Compensation Act, the Black Lung Benefits Act, and a segment of the Energy Employees Occupational Illness Compensation Program Act.

² Coverage is voluntary for employers in Texas. Although coverage is mandatory in all other states, many states permit exclusions for coverage for certain occupational or industrial classes of workers or for businesses with very few employees.

³ Throughout this article, any reference to injuries also includes occupational illnesses.

⁴ If the time lost from work because of the injury is sufficiently long, the worker will be entitled to indemnity benefits for the initial waiting period.

⁵ Most states also provide a minimum temporary total disability benefit, commonly set at the worker's actual earnings or an amount (such as \$20 a week), whichever is lower.

⁶ This is not the case in a number of states that use a wage-loss approach, described later.

⁷ Virtually all state laws differentiate between permanent partial and permanent total disability cases. Because the latter cases involve especially serious injuries, they occur much less frequently and are rarely found in some states. Therefore, from either an incidence or a total cost basis, permanent partial disability is the more important category of disabling claims. On a cost per case basis, permanent total disability claims are more costly.

⁸ For an excellent summary of the work on the adequacy of benefits for permanent disability, see NASI (2004).

⁹ The number of states using schedules is taken from a 1999 survey of state practices. As such, the precise number for this and for some other quantitative aspects of state practices may have changed. Any change in the intervening period, however, is certain to be marginally different. See Barth and Niss (1999).

¹⁰ California is the only state with a schedule that specifically adjusts for the occupation of the worker.

¹¹ In these states, the scheduled losses are so inclusive as to almost rule out the possibility of an unscheduled loss.

¹² Using the other methods described below, most states that adjust for age in setting the benefit for a permanent partial disability provide (*de facto* or *de jure*) a larger benefit as age at injury increases.

¹³ Section 224 of the Social Security Act. Fourteen states use a “reverse offset,” whereby the workers’ compensation benefit is offset against the Social Security Disability Insurance benefit to maintain the required 80 percent of average current earnings level.

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