

This article provides a brief history and background of workers' compensation programs for occupationally injured and ill workers in the United States. It presents the basic principle involved in workers' compensation and briefly discusses the disability benefits to which workers are generally entitled. It also discusses why there are settlements in this disability program and the availability of information about the amounts paid in workers' compensation cases for obtaining an offset for Social Security Disability Insurance benefits paid to the worker. Finally, the article explains the rationale behind the public policy on coordination of Disability Insurance and workers' compensation in the new paradigm of disability and return to work.

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Workers' Compensation: A Background for Social Security Professionals

by Ann Clayton

Summary

Workers' compensation programs in the United States are state regulated, with laws determined by each state legislative body and implemented by a state agency. The programs provide the payment of lost wages, medical treatment, and rehabilitation services to workers suffering from an occupational injury or disease. These programs were being adopted in the early 1900s—a time when the federal government considered social insurance and welfare to be the purview of the states and there was no discussion of a federal occupational injury or disease program other than the one created in 1908 to cover federal workers.

Ultimately, the agreements made in all states upon the adoption of workers' compensation statutes had a few common principles and similar categories of benefits, although the details concerning the level of benefits provided and the administrative mechanisms used to deliver the benefits varied dramatically from state to state—and still do. The basic principle underlying workers' compensation programs was that benefits would be provided to injured workers without regard to fault and, in return, employers would face limited liability. In other words, workers would be entitled to benefits if the injury was caused by their employment, regardless of who

caused the injury, and employers would be responsible for specific benefits itemized in the statute in exchange for the elimination of lawsuits for negligence.

Determining the appropriate amount of these benefits can be difficult, because most jurisdictions are attempting to calculate a future wage loss for an individual who has permanent physical residuals that are likely to affect his or her future earning capacity. Estimating future wage losses is not an exact science. The process often involves litigation, which quite often resolves through negotiated agreements and the payment of a lump sum to the injured worker. Furthermore, not all occupational injuries and diseases are paid for under workers' compensation systems. Coverage exceptions in each jurisdiction and differences in compensability rules eliminate some injuries and illnesses that may be work related. Therefore, some claims are denied; they may also be litigated and settled with lump-sum payments.

In recent years, a new paradigm of disability has emerged that considers disability as a natural and normal part of the human experience. With this new approach comes a greater responsibility for disability benefit programs to help people with disabilities gain access to the labor market and return to work after a

permanently disabling occurrence, whether it was work related or not.

The focus on return to work also requires greater coordination between disability programs. For example, an individual receiving workers' compensation benefits may also be entitled to benefits under Social Security Disability Insurance. In most states, there is an offset that reduces Disability Insurance benefits because of workers' compensation benefits paid; in other states, the offset works the other way.

Calculating offsets requires an understanding of each workers' compensation law, agency, and rules; obtaining appropriate authorizations for release of information from their applicant or beneficiary; and obtaining the record of payments or settlement agreements from the workers' compensation agency or payer.

Coordination of disability benefits has been recognized as a desirable public policy practice to ensure that disability payments are paid by the appropriate program (and therefore funded in the appropriate manner) and that the total disability benefits paid are not a disincentive for recovery and return to work. Future disability policy initiatives should not only support information sharing to ensure effective benefit coordination but should also encourage more active interaction between programs to assist people with occupational disabilities in returning to employment as early as possible in their recovery, thereby reducing the number of occupationally disabled people who have to depend on Social Security Disability Insurance over the long term.

A History of Workers' Compensation

Most histories of workers' compensation give credit for the origins of the current U.S. workers' compensation system to Europe, to Germany in particular. Germany had the first modern workers' compensation laws, known as Sickness and Accident Laws, which were enacted following their introduction by Chancellor Otto von Bismarck in 1884. The next such laws were adopted in England in 1897 (see, for example, Wales and Ideson 1977).

The adoption of such laws in the United States, beginning in the 1910s, has been called a significant event in the nation's economic, legal, and political history. It was hailed at the time as the first instance of social insurance in the United States and was rapidly adopted throughout the country (Kantor and Fishback 1998). By 1921, only six states had yet to enact workers' compensation legislation.

Before workers' compensation statutes were adopted by states, injured workers trying to recover medical expenses, lost wages, and other damages had to prove

the negligence of their employer in a long, costly, and uncertain process—one that negatively affected their daily lives. Employers also had a number of defenses they could use to avoid liability for these injuries, making the process more difficult for injured workers. The most common defenses employers used were *contributory negligence*, which would prevent the employee from recovering any damages if he or she contributed even in a small way to the cause of the accident; the *fellow-servant doctrine*, which could reduce or eliminate the employer's liability if another employee was at fault; and the *assumption-of-risk doctrine*, which could limit a worker's recovery of damages if he or she knew of the hazards in the workplace and "assumed" those risks by going to work.

Various studies done by state employer liability commissions suggest that a number of injured workers received no compensation at all under the system that was in effect before workers' compensation laws. The late Professor Arthur Larson estimated that only about 17 percent of accidents were due to employer fault (Elgie 1998). In samples of fatal accidents, about half the families of victims of fatal accidents received some payments, but the average payment was about 1 year's income. In a few cases, accident victims, their families, or both received substantial payments, but in far more cases no payments were made at all (Fishback and Kantor 2000). Many people argue that workers received higher wages in recognition of accepting the accident risk posed by more dangerous jobs. However, these workers had little opportunity to purchase accident or life insurance to help protect their potential loss of earnings, and workers were probably not aware of the importance and availability of such insurance.

It is difficult to determine which group supporting the adoption of workers' compensation laws thought it would benefit most. Some people believe it was the employers, whose workplace liability insurance premiums were beginning to rise as a result of increases in accidental injuries, the advent of state legislatures adopting employer liability laws, court decisions limiting employers' defenses in liability suits, and a lack of predictable costs of the awards made to workers (Kantor and Fishback 1998). Others believe it was the growing delays, difficulties, and unpredictability of injured workers having to prove negligence on the part of their employer before they could recover medical expenses and lost wages that led the increasingly powerful labor unions to support radical changes (Berkowitz and Burton 1987). Regardless, these laws were swiftly adopted throughout the nation, despite the great efforts required to reach agreements between business and labor on the specifics of the benefits to be provided and on which industries and employers would have to provide these benefits. Other issues in dispute at

the time were whether the system for administering this new social insurance should be public or private and whether insurance should be mandatory or elective for most employers.

Some of these secondary but important public policy issues on the structure of administration created initial constitutional concerns as well as fears by employers “that they would be forced out of business if refused coverage by insurance companies.” Employers were also fearful that insurance carriers might impose excessive premium rates that would be a financial burden. High premium rates could negatively affect a state’s economy and ultimately limit opportunities for employment. Another fear was that insurance rates might soar, enabling insurers to reap unfair profits. Some state legislative bodies addressed these concerns by establishing state workers’ compensation insurance funds. “These funds were created to provide a stable source of insurance coverage, thus protecting employers from underwriting uncertainties by making it possible to have continuing availability of coverage.”¹ Discussions based on these concerns had different outcomes in different states, which in turn resulted in the current varied approaches to administration. Even today, there are two states where employers can purchase insurance only from the state fund (North Dakota and Wyoming) and three states where an employer must either purchase insurance from the state fund or be approved to self-insure (Ohio, Washington, and West Virginia). In the remaining states, the private sector provides insurance, the state creates a mechanism (which may be a state fund) to provide a market of last resort, and self-insurance is allowed for employers who apply and are deemed eligible.

Why Is Workers’ Compensation a State Program?

People often ask why workers’ compensation is a state-run program instead of one administered by the federal government, or why it is not a joint federal/state program like unemployment compensation insurance or Social Security Disability Insurance. The answer lies in the timing of its adoption and the fact that few social programs existed in the early 1900s in the United States. At the time, the federal government considered social insurance and welfare to be the purview of the states, and there was no discussion of a federal program other than the one enacted in 1908 to cover federal workers (Fishback 2001). Social problems in the United States at that time were taken care of by the states, which appropriated money and provided homes or institutions, and by voluntary organizations, which did all they could to relieve the victims’ sufferings (Perkins 1962).

The only significant challenge to states’ rights to fully administer workers’ compensation programs came in the

early 1970s with the congressional appointment of the National Commission on State Workmen’s Compensation Laws. John Burton, a member of the National Academy of Social Insurance (NASI), chaired the commission, and Peter Barth, also a NASI member, was its executive director. Although the commission’s final report (1972) did not recommend federalization, it did suggest that federal oversight would be appropriate if the states did not comply in a reasonable time frame with at least the 19 essential recommendations made by the commission. This prompted a wave of changes in many workers’ compensation laws in the 1970s and early 1980s. To date, not all states have complied with even the 19 essential recommendations, but further action to implement federal oversight has not been met with the necessary political will on a national level.

Another wave of reforms occurred in the late 1980s and early 1990s in response to increasing costs of workers’ compensation to employers. The higher costs stemmed in part from the rise in benefit levels and expanded coverage prompted by the reforms in the 1970s and 1980s. The more recent reforms sought to reduce costs for employers by giving them more tools to contain growing medical costs and by lowering benefits to workers.

The Meaning of “No-Fault”

Ultimately, the agreements made in all states upon the adoption of workers’ compensation statutes had a few common principles, even though the details concerning the level of benefits and the administrative mechanisms used to deliver them varied dramatically from state to state—and still do. At the core of these agreements was the basic principle “that the benefits provided to injured workers [would] be provided without regard to fault and in return, there would be limited liability for employers” (Thomason, Schmidle, and Burton 2000). In other words, workers would be entitled to benefits for a work-related injury regardless of who caused the injury, but would give up the right to sue their employer for negligence. Employers, in turn, would be responsible for specific benefits itemized in state law in exchange for the elimination of lawsuits for negligence.

Today’s Workers’ Compensation Programs

The foregoing history might lead one to believe that worker’s compensation would pay for every physical condition needing medical treatment and causing disability that might be related to one’s employment, but that is not true. Payment for lost wages and medical treatment, among other benefits under workers’ compensation, is affected by coverage issues and compensability issues within each jurisdiction.

Coverage and Compensability

In many states, certain employers are not required to purchase workers' compensation coverage. Common exceptions would be small employers (those who employ fewer than 3 to 5 employees), agricultural (farm) workers, and domestic servants (usually only those employed in or about a private home) (Department of Labor 2003).

Over the past 75 years, case law and legislative revisions in each jurisdiction have also defined and clarified which conditions and under what circumstances injuries and diseases would be considered occupationally related and therefore compensable under the workers' compensation statute within each jurisdiction. For example, in most jurisdictions, carpal tunnel syndrome, which is often caused over time by specific, repetitive wrist and hand movements and pressure on a specific set of nerves, would be compensable if the nature of the job requires the kind of wrist movements and pressure that is medically thought to create this condition. But not so in Virginia, where it is defined as an "ordinary disease of life," with a much higher standard of proof for it to be compensable.² In addition, jurisdictions vary on the compensability of psychological conditions if there has not first been a physical injury. These are just two of the many examples of differences between workers' compensation laws that would cause a disability paid under one workers' compensation statute to be denied under another.

Finally, for some claims for workers' compensation benefits, an investigation may reveal that something other than an employee's work activity caused the condition or that there *might* be another cause. In these cases, the employer will usually deny the claim, and the employee may request that the local "trier of facts" listen to the evidence and decide whether the claim is work related or not. All jurisdictions create a process by which the workers' compensation administrative structure resolves these and other disputed issues. Tennessee and Alabama are the only jurisdictions that refer these cases to the local courts. All other jurisdictions have special processes set up with specific rules, procedures, and time lines to resolve disputes in workers' compensation cases until a subsequent appeal, which ultimately may go into the state's jurisdictional court system, is made (see Ballantyne 1998).

Benefits

When a covered employee suffers a work-related injury or disease, he or she is entitled to specific medical, disability, vocational, and death benefits itemized in each jurisdiction's statute. Although there are separate laws for each state and separate laws for federal employees, railroad workers, seafarers, and longshore and shipyard

workers, the general benefits available are similar. Each of these laws provides for payment of reasonable and necessary medical treatment to cure and relieve the employee from the physical effects of the injury, replacement of wages lost because of the injury, and funeral and dependency benefits if a worker dies from an occupationally related injury or disease. In addition, most of these laws provide some vocational rehabilitation services for workers whose injury led to permanent physical limitations that prevent them from returning to the occupation they had at the time of their injury. However, the amount of these benefits and the period in which they will be paid differ greatly from jurisdiction to jurisdiction.

Terms commonly used for these benefits are

- medical expenses and supplies;
- temporary disability, which includes both temporary total disability and temporary partial disability;
- permanent disability, which includes both permanent partial disability and permanent total disability;
- funeral benefits;
- dependency benefits; and
- vocational rehabilitation benefits.

Most workers' compensation claims result in a worker needing some medical treatment and returning to work within the jurisdictional disability waiting period of 3, 4, 5, or 7 days before workers' compensation can be paid for lost wages.³ In these cases, the employee continues to work or simply uses sick leave for any lost time. In a recent study by the Workers' Compensation Research Institute of workers' compensation in 12 large states, the percentage of occupational injury and disease claims that resulted in the need for only medical treatment, with no compensable lost time, varied from a high of 88 percent in Indiana to a low of 72 percent in Massachusetts (Telles, Wang, and Tanabe 2004).

Temporary Disability. The payment for lost wages in an occupationally related injury or disease usually begins with the payment of *temporary total disability* benefits.⁴ This benefit, which is paid when the employee cannot work at all while recovering from the injury, requires a physician's verification of disability. The weekly standard for the replacement of wages for temporary disability benefits, as recommended by the National Commission on State Workmen's Compensation Laws (1972), is 66 2/3 percent of an employee's gross wage or 80 percent of spendable earnings. Policymakers generally agree that workers' compensation benefits should be set at a level that would not cause undue financial pressure on a recovering worker but that would also not be a financial disincentive to return to work. In reality, all

states have a maximum and usually a minimum amount per week they will pay, regardless of the workers' earnings. States' actual weekly benefit replacement rates (commonly known as compensation rates) in 2003 varied from the 66 2/3 percent of gross wages paid by most states to a high of 70 percent (Oklahoma, Texas, and West Virginia) and a low of 60 percent (Massachusetts). The maximum weekly benefit amounts varied from 200 percent of the statewide average weekly wage (Iowa) to a low of 66 2/3 percent (Delaware and Mississippi). There is also a waiting period of 3, 5, or 7 days from first date of disability that is reimbursed if the employee is still disabled after a period of time. This retroactive period also varies tremendously across jurisdictions, from a 7-day minimum in Connecticut to 4 weeks in Texas (Department of Labor 2003).

An employee who can work but with physical limitations (such as no lifting over 10 pounds repeatedly) while recovering may go back to work with "reasonable accommodations" made to the job or may do a different job, one that has duties within his or her physical abilities. If the employee is paid less for the reasonably accommodated position or works fewer hours, he or she will have a continuing wage loss even while working and will be entitled to *temporary partial disability* benefits. Those benefits are paid when an employee has been released to work but has physician-directed physical limitations and loses wages as a result. In these situations, the employee is usually working at a different job that pays less than the job at the time of injury, is working fewer hours, or is looking for employment within his or her physical limitations. Temporary partial disability benefits are generally calculated as a percentage of the difference between what the employee was making when originally injured and what he or she is able to earn with the physical limitations. In general, temporary partial disability benefits under workers' compensation and Disability Insurance benefits under Social Security would generally not be paid simultaneously, because the payment of temporary partial disability benefits indicates the employee is not totally disabled.

Both temporary total disability and temporary partial disability benefits are generally paid while the employee is in active medical treatment and while healing from an injury. These benefits will continue until

- the worker is released to return to work without any physical limitations,
- the worker is earning the same wage as when injured,
- the worker has been paid benefits for the number of weeks allowed by statute for that category of benefit, or

- a "trier of facts" determines that the worker is no longer eligible for those benefits.

Some states limit the payment of temporary benefits to a combined 104, 156, or 400 weeks (Florida, Massachusetts, and Tennessee, respectively, for example), and some allow these benefits to continue for up to 11 years (Pennsylvania) or without limitation (Illinois) (Department of Labor 2003). After an employee returns to work or reaches the maximum temporary benefits payable under the applicable workers' compensation statute, he or she may then be eligible for some type of permanent benefit.

Permanent Disability. The concept of replacing 66 2/3 percent of a person's gross wages or 80 percent of their spendable earnings is fairly easy to understand and apply when people are disabled for short periods of time. However, in most jurisdictions, once a physician has stated that additional medical treatment will not result in further physical recovery (a concept known as maximum medical improvement or the end of the healing period), each system has a mechanism to determine what further benefits are due when a worker has a permanent loss of physical function and therefore will presumably have a permanent loss of future earnings. As with temporary benefits, there are two separate kinds of permanent benefits available under most workers' compensation statutes: permanent total disability and permanent partial disability.

Permanent total disability benefits are the less complicated of the two to explain and are the most similar to Social Security Disability Insurance benefits. Their payment in workers' compensation cases reflects either a very severe injury or a very severe resulting physical limitation for an employee disabled as a result of an occupational injury or disease. Many statutes have a specific listing of conditions that create a presumption of entitlement to permanent total disability benefits. Such conditions commonly include the loss of both legs, both arms, or both eyes. Individuals with other conditions may be eligible if they have a specific percentage of disability as rated by a physician. For example, the Florida statute (440.15) lists the following conditions that must be present for an individual to be presumed permanently totally disabled: spinal cord injury involving severe paralysis of an arm, a leg, or the trunk; amputation of an arm, a hand, a foot, or a leg involving the effective loss of use of that appendage; severe brain or closed-head injury (which is further defined); second- or third-degree burns of 25 percent or more of the total body surface or third-degree burns of 5 percent or more to the face and hands; or total or industrial blindness. In all other cases, the statute requires the employee to establish that because of a physical limitation he or she is not able to engage in at

least sedentary employment within a 50-mile radius of the employee's residence.

In the majority of states, permanent total disability benefits are paid at the same rate as those for temporary total disability, again subject to the state's maximum and minimum benefit provisions. A number of states also have automatic cost-of-living escalators that increase the employees' permanent total disability benefit annually. In other states, the cost-of-living escalator is legislatively implemented, paid by a state fund, or both.

In most states, permanent total disability benefits are payable until death or return to work as long as the disability continues, but in a number of states benefits may be capped at a dollar amount or a number of weeks or may be paid only until a certain age is reached. For example, Kansas caps the total amount payable at \$125,000 and Mississippi at \$148,977; Indiana limits benefits to 500 weeks; Minnesota has a rebuttable presumption that permanent total disability benefits cease at age 67; and West Virginia stops paying those benefits when the employee reaches the age of eligibility for Social Security old-age and survivor benefits (Department of Labor 2003). Although one may think the entitlement to permanent total disability benefits means an employee will never work again, many states are open to reconsidering employment at times during the employee's ongoing disability benefits. In addition, most insurance companies will do semiannual or annual activity checks to determine whether the employee is working or able to work. With today's technology and increased medical diagnostics and procedures, individuals who once may have been considered permanently disabled may be able to work again. This is one reason why it is becoming more important for disability systems to coordinate their efforts at reemployment.

Permanent partial disability benefits are much more complicated and diverse in both their design and application. A number of excellent books have been written on the subject, explaining how different states attempt to pay future lost earnings to workers who have permanent physical limitations due to their on-the-job illnesses (see Berkowitz and Burton 1987; Barth and Niss 1999). The challenge in designing a benefit for the payment of future lost earnings for workers who can still work but have a permanent physical limitation entails

- finding a method of determining permanent partial disability benefits that is easy to understand and calculate to reduce administrative costs and disputes over the entitlement or the amount of entitlement;
- finding a method that produces equitable and adequate benefits for the losses suffered by workers; and

- reaching political agreement on what future earnings loss is the result of the injury and should therefore be paid by employers and how much may result from other factors and should not be the employer's direct responsibility.

A thorough discussion of how states attempt to meet these challenges is beyond the scope of this article. What is important, however, is that determining entitlement to and the amount of permanent partial disability benefits in workers' compensation systems is not an exact science, and the entitlement and amounts to be paid are often in dispute. This creates one additional area in which the employer and employee may settle the dispute with a lump-sum payment without specifying exactly how the amount was calculated. This uncertainty makes the determination of the appropriate offset amount for Social Security Disability Insurance benefit very complicated. It is also becoming apparent that state systems are not doing a very good job of designing permanent partial disability systems to compensate for a worker's future wage loss, regardless of the type of system being used (see Boden and Galizzi 1999; Biddle 1998; Reville and others 2001a; Reville and others 2001b; and Reville, Schoeni, and Martin 2001).

In general, jurisdictions handle the payment of non-scheduled permanent partial disability benefits (ones not specifically itemized in the statute) in one of four ways and base it on physical impairment (the physiological and psychological loss), disability (the economic and social consequences), or a combination of the two (Barth and Niss 1999).

- The *impairment approach* looks only at the actual physical and psychological loss produced by the injury or illness. The impairment rating is usually made by a health care provider using a version of the American Medical Association's *Guides to the Evaluation of Permanent Impairment* or a similar guide.
- The *loss-of-earning-capacity approach* estimates the workers' future wage loss using such factors as the worker's age, education, training, skills, and degree of impairment and the existing labor market conditions.
- The *wage-loss approach* uses a calculation of the worker's actual weekly wage losses. The calculation is based on the difference between what the employee is able to earn with a permanent disability and what he or she was able to earn at the time of the injury.
- The *bifurcated approach* uses a combination of the above approaches based on whether the

employee returns to employment or not. Workers who have returned to work at or near the wages they earned at the time of the injury receive a payment based on impairment, and those who do not return to work receive a payment based on a loss of earning capacity.

Dependency Benefits. The family of a worker whose death resulted from an occupational injury or disease is paid dependency benefits. These benefits are calculated in a manner similar to that for temporary or permanent total disability benefits but vary according to the number of eligible dependents and may cease for dependent children at age 18 (or older if they are a full-time student) and for a spouse 2 years after remarrying. In most jurisdictions, a spouse's benefits will continue for life unless he or she remarries, but a number of states have a maximum time period for which these benefits are paid. For example, these benefits can cease after 12 years in Alaska and after 500 weeks in Idaho, Indiana, and Maine.

An example of the distribution of benefits for all these benefit categories in workers' compensation cases is shown in Chart 1.

Disputes and Settlements

Disputes or disagreements over benefit entitlement can occur at any time in the life of a workers' compensation claim and can arise over any issue. The most commonly disputed issues are

- initial compensability (whether the injury or disease is work related);

- whether the current disability is related to the work-related injury or disease;
- whether and when the employee can return to work;
- extent of physical limitations and whether they are temporary or permanent;
- extent of permanent partial disability or entitlement to ongoing wage-loss benefits; and
- entitlement to permanent total disability benefits and, if entitled, for how much and how long.

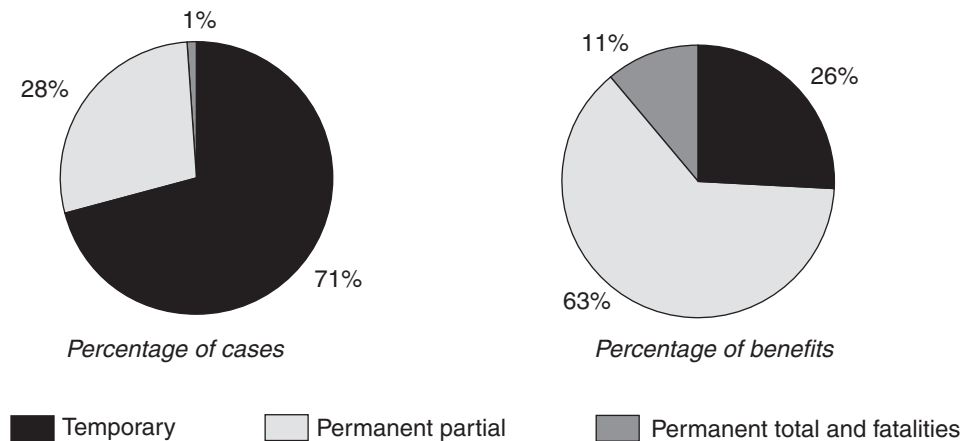
With a few exceptions (Texas, for example), most jurisdictions allow settlements of workers' compensation cases. These settlements may also be termed compromise-and-release agreements, commutations, or wash-outs. In most instances, the payer will attempt to settle all future benefits, including medical payments, in jurisdictions that allow this.

According to recent research done by the Workers' Compensation Research Institute, the median for the 12 states studied resulted in a lump-sum settlement in 25 percent of claims with more than 7 days of lost time at the 3-year claim maturity. The percentage varied from a high of 52 percent in Illinois to a low of 11 percent in Texas (Telles, Wang, and Tanabe 2004). Given the large proportion of cases involved, understanding which benefits are being compromised in these settlements and whether there should be an offset for Disability Insurance is an important concern.

Availability of Data for Determining an Offset

Many state workers' compensation agencies act as the depository for workers' compensation disability claim records. Even agencies that do not act in that capacity will usually keep records on all disputed claims and any settlements. With a properly executed authorization from the worker, records on file with state agencies would usually be available to Social Security Administration staff who are determining an offset. But many of the records are in paper files and are not available electronically, and the length of time needed to process a request for records

Chart 1. Distribution of workers' compensation cases and cash benefits, by type of disability, 1996–1998



SOURCE: National Council on Compensation Insurance, *Annual Statistical Supplement* (Boca Raton, FL: NCCI, 2001), Exhibits X and XII.

NOTES: Medical-only cases are excluded. The data include only privately insured employers in 38 states. Benefits are incurred losses.

and the cost for such a request varies from jurisdiction to jurisdiction.

Determining whether an offset is warranted and in what amount requires documentation of the amount and type of disability benefits paid under a workers' compensation claim for which the Social Security Administration is also paying Disability Insurance benefits. States in which the workers' compensation agency acts as the depository for these records usually have a specific state form that requires the payer to file the amounts and types of benefits paid to a worker for a work-related injury or illness. The forms, procedures, and time frames for filing this information are usually contained in rules promulgated by the state agency. Again, these forms are usually filed in paper format, although the International Association of Industrial Accident Boards and Commissions has been developing standards for the electronic submission of this information to state agencies.

In addition, settlements in most states are required either to be approved by an administrative law judge, hearing officer, commissioner, or magistrate (terms for workers' compensation adjudicators) or to be filed with the agency. Therefore, there will be an official document—an award, settlement, or agreement of some type—that itemizes the issues in dispute and the payments agreed upon to settle the dispute. Obtaining either the listing of payments filed with the state agency or the settlement agreement would give the Social Security Administration the information needed either to calculate the amount of the offset for Disability Insurance or to write to the payer and ask for a specific breakdown.

The Social Security Administration also needs to know, when presented with a case, whether workers' compensation benefits are already being paid or have been paid for a disability they have accepted. Obtaining this information would involve the coordination of database matches and the applicant's completion of proper authorizations for this purpose. (Payers in states where worker's compensation benefit payments can be offset by Social Security disability payments would also be interested in this match.)

Disability Public Policy and Justification for Offsets

Since the 1970s, a new paradigm of disability has emerged that considers disability as a natural and normal part of the human experience. Rather than focus on "fixing" the individual, the new paradigm focuses on taking effective and meaningful actions to fix or modify the natural, constructed, cultural, and social environment. In other words, the focus is now on eliminating the attitudinal and institutional barriers that preclude persons with disabilities from participating fully in society's mainstream (Silverstein 2000).

Much work has been done and considerable investments have been made in adaptive technology to allow persons with disabilities to remain as independent as possible. The adoption of the Americans with Disabilities Act in 1990 attempted to guarantee that qualified people with a covered disability would not be discriminated against in the workplace. The new paradigm seeks to include people with disabilities in all activities of life, including employment, and most recently has included new federal programs like the Ticket to Work.

With this new approach comes a greater responsibility for disability benefit programs to assist people with disabilities in gaining access to the employment market and in returning to work after a permanent disabling occurrence, whether work related or not. Hence, all disability support programs should have a greater focus of resources on assisting people with disabilities to become employed before they have given up hope that they can ever work again and also on ensuring that the receipt of wage-replacement benefits does not create a disincentive to return to work.

Notes

¹ See http://www.aascif.org/public/1.1.2_emerge.htm.

² See Virginia statute numbers 65.2-400 and 65.2-401.

³ See Department of Labor (2003) for jurisdictional waiting periods.

⁴ Any of the workers' compensation disability benefits can be payable, however, without temporary total disability benefits having been paid first.

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