

## WORKERS' COMPENSATION

### OVERVIEW

Every State and the Federal government has a workers' compensation law that provides no-fault medical and lost wage benefits to workers who are injured, killed, or become ill in the course of employment. However, there are no national standards for the workers' compensation system and no requirement that States mandate workers' compensation coverage. Before the passage of workers' compensation laws, compensation for work-related injury or death was the exception rather than the rule, as employees had to sue their employers for negligence, and this could be difficult to prove. The goal of workers' compensation programs is to provide prompt, adequate benefits to injured workers while at the same time limiting employers' liabilities. Workers' compensation has become a substantial component of the social insurance system and a significant element of the overall cost of employment (See Table 15-WC-1). With this system, employers can expect more predictable costs than under the law of negligence, while employees are spared lengthy and uncertain litigation. While the elimination of lawsuits was fairly well achieved at first, significant amounts of litigation have re-emerged in recent years.

Table 15-WC-1--FINANCIAL DIMENSIONS OF WORKERS' COMPENSATION

	1990	1995	2000	2005
Cash benefits paid (in billions of dollars)	21.7	25.7	25.0	29.1
Medical benefits paid (in billions of dollars)	15.1	16.6	19.9	26.2
Employer cost per \$100 in covered wages (in dollars)	2.18	1.82	1.34	1.70

Source: Sengupta et al. (2005)

Although workers' compensation laws differ from State to State, they tend to have common features based on the same overall principles. Victims of work-related injuries are entitled to receive prompt, reasonable compensation for injury, and, in cases of death, survivors receive income and burial benefits. However, employees and survivors are barred from suing the employers except under unusual circumstances or if the employer does not pay compensation. Negligence and fault are largely immaterial and do not affect the worker's right of recovery.

Employers pay all costs, either directly or through insurance. A variety of public and private sector insurance mechanisms are used, with some larger employers opting to "self-insure," which means to bear the financial risks themselves. Table 15-WC-2 provides workers' compensation benefits payments for each type of insurance arrangement.

Cases are handled in the first instance by the employing firm or its insurer. A State government appeals mechanism is available to resolve disputed claims with relatively little complexity or delay. Fees to lawyers and witnesses are minimized and costs of litigation are reduced or reimbursable to workers regardless of the outcome.

Cash compensation is based on lost earnings or earning capacity. Typically, the benefit for total disability is two-thirds of lost earnings, paid for the term of the disability or a maximum allowable period. Benefits are not subject to Federal income tax. Injury-related medical costs are fully covered, although the majority of States have established some medical cost controls such as fee schedules and utilization reviews, and a number of States limit employees' choices of physicians. There is no provision for "pain and suffering" or other non-economic damages, or for punitive damages. The purpose of the system is to make the worker economically whole, not to implement a wider concept of justice.

The States have established mechanisms to facilitate and encourage the worker's return to the labor market through vocational rehabilitation, in order to minimize losses to both workers and employers.

Some State workers' compensation laws have established special funds and provisions to compensate workers in special situations, such as aggravation of injuries from previous jobs or cases in which an employer is not insured.

Table 15-WC-2—BENEFIT PAYMENTS BY INSURANCE ARRANGEMENT

	[As Percent of Total Payments]			
	1990	1995	2000	2005
By insurance companies <sup>1</sup>				
Private Sector	58.1	41.7	48.3	50.8
State-run	15.4	17.5	15.0	19.4
Federal Programs <sup>2</sup>	7.6	7.2	6.6	5.9
Self-insured (including insurance deductibles)	19.0	33.7	30.1	23.8

<sup>1</sup>Excluding deductibles

<sup>2</sup>Federal employees, longshore and harbor workers, black lung program.

Note: Number may not equal 100% due to rounding.

Source: Sangupta et al. (2005).

## BENEFITS

Workers' compensation provides two kinds of benefits, income replacement and medical care. The income benefit for total disability is set at a specified fraction of the worker's usual earnings for as long as he or she is unable to return to work. Partial disability is compensated proportionately to total disability according to the estimated fraction of earning capacity that has been lost. For certain injuries, such as the loss of a limb, benefits are paid according to a schedule rather than an estimate of lost capacity. The replacement rate for total disability is less than 100 percent for two reasons. First, the benefit is not subject to Federal (and usually not to State) income tax, and second, the decrease in income serves as a deductible that discourages fraudulent claims and gives an incentive to claimants to return to work as soon as possible. Table 15-WC-3 indicates the variations in benefit formulas by State for permanent total disability.<sup>1</sup>

In order to provide a basic level of income support and to limit program costs, cash benefits are subject to various maximums and minimums, which are usually defined in State law in terms of the State average weekly wage (SAWW). There are no direct cost-of-living increases in benefits. However, for those whose benefits are determined by the maximum or minimum, their benefits would change as those benchmarks change in step with the SAWW. Benefits may be offset to reflect income support from other sources, such as Social Security or private pension plans, under provisions varying from State to State.

In cases of death, benefits are paid as a percentage of previous earnings but with various time limits. These limits can be for specific time periods, such as 10 years, or until the spouse remarries or reaches a specified age and the youngest child reaches age 18. No payment is due if there are no immediate survivors as defined by State law. These provisions are in keeping with the philosophy of workers' compensation as a practical method of maintaining the worker's role in helping to provide for the household, rather than a liability-based system of distributive justice.

Cases of occupational illness, as opposed to traumatic injury, present special problems because causation may be difficult to prove. Symptoms may not develop until long after exposure and the exposure may have occurred over a long period of time and over the course of several different employers. In addition, the resulting illness may be indistinguishable from illnesses that could have other, non-work causes.

<sup>1</sup> This information is simplified for the purposes of this publication. Reference should be made to State law and regulations for more precise information.

Table 15-WC-3—Permanent Total Disability Benefits, January 2006

State	Basic Benefit (% of worker's	Maximum Weekly Benefit	
	wage)	% of SAWW	Amount (in dollars)
Alabama	66.7	100.0	607.00
Alaska	80.0 (% of spendable earnings)	120.0	875.00
Arizona	66.7	N/A	374.01
Arkansas	66.7	85.0	488.00
California	66.7	N/A	840.00
Colorado	66.7	91.0	697.20
Connecticut	75 (% of spendable earnings)	100	1,005.00
Delaware	66.7	66.7	543.53
District of Columbia	66.7	100.0	1,022.00
Florida	66.7	100.0	683.00
Georgia	66.7	N/A	450.00
Hawaii	66.7	100.0	854.00
Idaho	67.0	90.0	488.70
Illinois	66.7	133.3	1,173.00
Indiana	66.7	N/A	588.00
Iowa	80 (% of spendable earnings)	200.0	1,173.00
Kansas	66.7	75.0	467.00
Kentucky	66.7	100.0	631.22
Louisiana	66.7	75.0	454.00
Maine	80 (% of spendable earnings)	90.0	542.40
Maryland	66.7	100.0	801.00
Massachusetts	66.7	100.0	958.58
Michigan	80 (% of spendable earnings)	90.0	706.00
Minnesota	66.7	N/A	750.00
Mississippi	66.7	66.7	351.14
Missouri	66.7	105.0	696.97
Montana	66.7	100.0	520.00
Nebraska	66.7	100.0	600.00
Nevada	66.7	150.0	690.83
New Hampshire	60.0	150.0	1,123.50
New Jersey	70.0	75.0	691.00
New Mexico	66.7	100.0	585.89
New York	66.7	N/A	400.00
North Carolina	66.7	110.0	730.00
North Dakota	66.7	110.0	604.00
Ohio	66.7	100.0	704.00
Oklahoma	70.0	100.0	577.00
Oregon	66.7	133.0	948.24
Pennsylvania	66.7	100.0	745.00
Rhode Island	75.0 (% of spendable earnings)	110.0	785.00
South Carolina	66.7	100.0	592.56
South Dakota	66.7	100.0	533.00
Tennessee	66.7	100.0	663.00
Texas	75.0	100.0	540.00
Utah	66.7	85.0	501.00
Vermont	66.7	150.0	950.00
Virginia	66.7	100.0	738.00
Washington	60.0 – 75.0	120.0 (% of State's average monthly wage)	905.17
West Virginia	66.7	100.0	568.78
Wisconsin	66.7	110.0	744.00
Wyoming	N/A	100.0	606.32
<i>Federal Programs</i>			
Federal Employees (FECA)	66.7 – 75.0	N/A	1,715.72
Longshore and Harbor Workers (LHWCA)	66.7	200.0 (% of national average weekly wage)	1,073.64

N/A – Amount is set by law or regulation and is not based on a percentage of wages.

“Spendable earnings” is defined by state law.

Source: U.S. Department of Labor, Office of Workers' Compensation Programs (2006).

## FEDERAL ROLE

With few exceptions, workers' compensation programs are defined and overseen pursuant to State laws. Calls have been made from time to time for the Federal government to set minimum national

standards for workers' compensation. The Occupational Safety and Health Act (P.L. 91-596), passed in 1971, included a provision establishing a commission to study workers' compensation. The commission made over 80 recommendations, 19 of which it deemed essential, in areas including worker eligibility, disease coverage, rehabilitation services, and size and duration of cash benefits (National Commission, 1972). In the next decade or so, Congressional investigations of these matters aided in inducing some reforms, but did not result in the passage of any Federal mandates for the States. Today, States are largely in compliance with a majority of the commission's essential recommendations, but benefit levels remain below those that would be required by a model workers' compensation act based on the recommendations of the commission.

*Federal Employees Compensation Act (FECA)*-The Federal government directly provides or oversees workers' compensation or similar benefits for certain groups of workers. The largest of these is the Federal workforce, which is covered by the Federal Employees Compensation Act (FECA; 5 U.S.C., Chapter 81) rather than by State laws. FECA is administered by the Office of Workers' Compensation Programs (OWCP), in the U.S. Department of Labor. Eligible workers include all civilian executive, legislative and judicial branch employees as well as civilian defense workers, medical workers in veterans' hospitals, and employees of the U.S. Postal Service. Additionally, special legislation extends coverage to Peace Corps and other volunteers, Federal jurors, Reserve Officer Training Corps cadets, and other groups working in some capacity as part of Federal programs.

During fiscal year 2006, the FECA program provided workers' compensation coverage for approximately 2.7 million Federal workers and paid approximately \$2.4 billion in benefits to approximately 264,000 workers. Of the benefits paid, over \$1.6 billion was for wage-loss compensation, approximately \$668 million was for medical and rehabilitation services, and approximately \$129 million was for death benefits paid to survivors (U.S. Department of Labor, 2007).

FECA generally resembles most State workers' compensation programs. FECA also has a number of distinctive features including:

- FECA is an entirely self-insured system in which agencies pay 100% of the cost of providing benefits to their injured workers;
- the FECA benefit formula replaces up to three-quarters of an injured worker's wages while State programs generally only replace two-thirds of wages;
- the FECA program has no maximum cap on disability benefits;
- FECA provides for salary continuation for up to 45 days before switching to workers' compensation benefits;
- FECA pays a death gratuity of up to \$100,000 in the case of a Federal employee who dies in connection with a U.S. armed forces operation;<sup>2</sup> and
- the FECA appeals process is non-adversarial and contained entirely within the U.S. Department of Labor.

*Longshore and Harbor Workers' Compensation Act (LHWCA)*--The Longshore and Harbor Workers' Compensation Act (LHWCA; 33 U.S.C. 901-950) covers injuries that occur during maritime employment on "navigable waters" of the United States. Benefits are paid by the employers, with oversight by the OWCP in the U.S. Department of Labor rather than State governments. The program was originally established in response to a Supreme Court decision (*Southern Pacific Co. v. Jensen*, 244 U.S. 205) holding that State workers' compensation laws did not apply on the nation's navigable waters.

Under the LHWCA, covered maritime employment includes the building, repairing, loading or unloading of vessels, but does not cover working as a crew member or master of a vessel. The term "navigable waters" includes places beyond those where a boat could float, such as land that adjoins water at a pier, wharf, dry dock, or terminal. Areas adjacent to a pier or wharf can be included if they are used for

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<sup>2</sup> Civilian employees of the Federal government, such as Department of Defense employees who support uniformed military personnel, who die in connection with military operations in Iraq and Afghanistan would qualify for this death gratuity.

loading, unloading, repairing, or building vessels. The LHWCA exempts shipyards dealing with recreational boats less than 65 feet in length and certain land operations of yards dealing exclusively with smaller commercial vessels such as work boats less than 1,600 tons gross.

The LHWCA also covers several miscellaneous classes of employees through the following extensions to the law:

- the Defense Base Act, enacted in 1941, covers employees on overseas military bases or other areas under public works contracts performed by contractors with U.S. government agencies;
- the Nonappropriated Fund Instrumentalities Act, enacted in 1952, covers civilian employees in post exchanges or service clubs of the armed forces; and
- the Outer Continental Shelf Lands Act, enacted in 1953, covers mineral exploration and production workers such as those on offshore drilling platforms.

The LHWCA is more generous than most State workers' compensation laws as payments for permanent total disability and for death are subject to annual cost-of-living increases. In addition, compensation is available for employment-related diseases that manifest themselves after retirement has begun. This provision was added in 1984 due to concern over diseases caused by asbestos.

The LHWCA also allows an injured worker to sue third parties, other than the employer, who may be at fault for his or her injuries. For example, when an individual working for a repair firm is injured on a vessel, there may be a claim of negligence against the vessel and its owner. However, under the 1972 amendments to the LHWCA (P.L. 92-576), the worker cannot bring claims under the doctrine of seaworthiness, which would entail absolute liability on the part of the owner.

In fiscal year 2005, 24,980 lost-time injuries were reported under the LHWCA by approximately 300 self-insured employers and 250 insurance carriers. In 2005, the LHWCA paid out nearly \$795.5 million in workers' compensation benefits, including nearly \$60 million in benefits to contractors injured overseas under the Defense Base Act (Sengupta 2005).

*Coal Mine Workers' Compensation*--As part of the Coal Mine Health and Safety Act of 1969 (P.L. 91-173; 30 U.S.C. 901 et seq.), which mandated reductions in miners' exposure to coal dust, income and medical support was offered to those who contract coalworkers' pneumoconiosis (black lung disease). While dust control has yielded some success in reducing new cases, nearly 5,000 new black lung claims are still being received each year and more than 60,000 primary beneficiaries remain on the rolls, at a total cost of \$400 million per year. The program is administered by the OWCP and is funded primarily by a tax on coal production.

Former miners who suffer total disability due to black lung disease or related diseases are eligible for medical and income benefits and the survivors of miners who die because of black lung disease are eligible for cash benefits. The medical benefits consist of diagnostic testing (available for all claimants) and services needed due to the disease, including drugs, durable medical equipment, home nursing visits, and hospitalization. The base rate of the income benefit is set at three-eighths of the Federal salary for an employee in grade GS-2, Step 1. The benefit is augmented if the miner or his or her survivor has dependents, up to as much as double the base rate when there are three or more dependents. Black lung benefits are not subject to Federal income tax but may be taxed by the States. The benefits may be subject to offsets, depending on when the initial claim was made, against various other income support systems such as workers' compensation, private disability insurance, and Social Security Title II benefits.

*Radiation Exposure Compensation Act (RECA)*- The Radiation Exposure Compensation Act (RECA; 42 USC 2210, note) was passed in 1990 as a form of government compensation to the following three groups of people who suffered injury due to atmospheric testing of nuclear weapons in the Western States:

- civilian government and contract workers who participated in the nuclear tests;<sup>3</sup>
- civilians, referred to as downwinders, living in areas adjacent to the testing sites that may have been injured by nuclear fallout; and
- mining and milling workers and ore transporters involved in the mining, production, or transportation of uranium for nuclear weapons.

Proof of causation is not necessary to qualify for RECA benefits. Rather, the claimant needs only to show that he or she was potentially exposed to radiation in a manner specified in law and has contracted one of the types of cancer specified under RECA. Eligible test site workers and downwinders receive a lump-sum payment of \$75,000 while qualified mining and milling workers and ore transporters receive a lump-sum payment of \$100,000.

The RECA program is administered by the Civil Division of the U.S. Department of Justice. To date, just under \$1.3 billion in benefits has been paid to 28,113 RECA claimants (U.S. Department of Justice 2008).

*Energy Employees Occupational Illness Compensation Program Act (EEOICPA)*-The Energy Employees Occupational Illness Compensation Program Act (EEOICPA; 42 USC 7384 et seq.) provides cash and medical benefits to Department of Energy employees and contractors who contracted certain occupational illnesses in the course of their employment. Part B of the program pays a lump sum of \$150,000 and medical benefits to Department of Energy employees and contractors who worked at certain facilities and who developed a specified type of radiation-induced cancer, chronic beryllium disease, or chronic silicosis. Cash benefits are also available for survivors of deceased covered workers. In 2005, a total of \$392.5 million in Part B benefits was paid by the EEOICP including \$33.8 million in medical benefits (Sengupta 2005).

Prior to 2004, Part D of the program provided assistance from the Department of Energy to covered workers in obtaining State workers' compensation benefits. In 2004, Congress amended the EEOICPA and replaced Part D with Federal benefits provided under Part E. Part E of the program pays variable benefits, based on wages and impairment, of up to \$250,000 and medical benefits to covered uranium workers and Department of Energy contractors who developed illnesses due to exposure to certain toxic substances, including substances other than radiation, such as solvents and acids. Cash benefits are also available for survivors of deceased covered workers. In 2005, a total of \$268.6 million in Part E benefits was paid by the EEOICP including \$30,000 in medical benefits (Sengupta 2005).

*Railroad Workers and Seamen*-Generally, railroad workers and seamen are not covered by State or Federal workers' compensation laws. Rather, they are compensated for employment-related injuries through the Federal court system. For railroad workers, the Federal Employers' Liability Act (45 U.S.C. 51-60) mandates the common law principle of comparative negligence, but with various modifications generally more favorable to the worker than traditional common law. For seamen, the Merchant Marine Act of 1920, commonly known as the Jones Act (46 U.S.C. 688 et seq.), provides similar standards and allows injured seamen to collect benefits for employment-related injuries.

## REFERENCES

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<sup>3</sup> Military personnel who participated in the nuclear tests are covered by the Radiation-Exposed Veterans' Compensation Act (38 U.S.C. 1112(c)).

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