

Compendium on Workmen's Compensation

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Chapter 9

Income Replacement Benefits: II

PERMANENT PARTIAL DISABILITY

Scheduled Injuries

If an industrial injury leaves a worker with an impairment which is permanent but not totally disabling, he may qualify for permanent partial disability income benefits. Benefits may be either scheduled or unscheduled. In order to introduce an element of certainty into workmen's compensation awards, State statutes typically contain a schedule which shows the number of weeks of compensation payable for the specified injuries. Generally, the injuries listed are the loss, or loss of use, of the extremities—arms, legs, hands, fingers, toes—and loss of eyesight and hearing.

In 30 States, the District of Columbia, the Federal Employee's Compensation Act, Guam, Puerto Rico, and the Longshoremen's Act, the amount paid for the scheduled injury will be in addition to the allowance for temporary disability. In 18 jurisdictions, the amounts allocated for the scheduled injury may be in addition to the temporary disability, with certain limitations to the period. In Louisiana and Texas, compensation for temporary disability is deducted from the allowance for the scheduled injury.

Only California has a schedule which takes into account certain of the demographic characteristics of the worker in addition to the particular loss of a part or function.¹ In Oregon, the law provides for payment of \$70 for each so-called degree of injury. For example, the loss or separation of an arm above the elbow rates 192 degrees. In Wyoming, the law provides for the payment of certain fixed sums for scheduled injuries rather than

the number of weeks. The same system operates in Washington. In effect, the amounts paid are independent of the worker's wage history.

As with other benefits in workmen's compensation, there is great diversity in these schedules,² both in the number of weeks paid for specified losses and in the maximum percentage of wages and the minimum and maximum payments per week. In addition, States differ in total maximum dollars allowed as benefits. For the most part, these maximums pertain to the nonscheduled injuries which we will discuss below.

Maximum percentage of wages or wage loss.—For the most part, the laws of the jurisdictions specify that the maximum percentage of wage or wage loss (what we have been calling the statutory replacement rate) is the same for permanent partial disabilities as for temporary disabilities.

Some differ from this rule because of the flat rate paid for permanent partial disabilities, as in Washington and Wyoming. North Dakota pays a flat sum of \$31.50 per week times the number of weeks specified in the schedule.

In four other jurisdictions, the percentages specified for permanent partial are less than those specified for temporary total disability. Rhode Island has a 66 $\frac{2}{3}$ percent replacement in temporary disability but a 50 percent replacement in permanent partial. Nevada has a 50 percent replacement ratio for permanent partial as opposed to the higher 65 percent for temporary total disability. Arizona's 55 percent permanent partial contrasts with its 65 percent in temporary total. In New Jersey, temporary total calls for 66 $\frac{2}{3}$ per-

cent of wages. For permanent partial the law specifies a wage and compensation schedule where the two-thirds level is adhered to for workers earning wages of \$45 a week or less, but the worker earning, for example, \$60 a week is entitled to a compensation benefit of \$36 or 60 percent.

In a class by itself, Massachusetts allows a worker to receive as much as 100 percent of his wages for permanent partial, although limited to 66⅔ percent for temporary disability.

Flexible maximums.—Whereas 14 jurisdictions have flexible maximums for total disability, only nine retain them for all permanent partial disability cases. Rhode Island has a flexible maximum for nonscheduled permanent partials, but a statutory maximum for scheduled injuries. The other four States, Maryland, New Jersey, North Dakota, and Washington have a statutory maximum or a flat rate, as discussed above, for both scheduled and nonscheduled permanent partial cases.

Minimum benefits.—The statutory minimums for the scheduled disabilities can be compared with those paid for temporary total disability. Hawaii pays a higher minimum in the case of permanent partial disability than in temporary total disability: \$35 per week against \$18 a week or the average wage if less. Nevada, which has no minimum for temporary total disability, does have a minimum payment for permanent partial disability of \$19.38 per week. In other jurisdictions, viz Arizona, California, Montana, New Jersey, New York, and Oregon, where the minimums for the scheduled permanent partial differ from those for temporary total, they are lower for the permanent partial. There is no minimum specified for permanent partial disability in 11 jurisdictions, viz Georgia, Illinois, Kansas, Maine, Massachusetts, Michigan, Mississippi, New Mexico, Utah, Washington, and coverage of Federal employees.

Maximum weekly benefits.—No jurisdiction pays a higher maximum for a permanent partial scheduled injury than for a temporary total disability, except possibly Maryland. Maryland will pay a maximum of \$55 per week for the first 42 days of temporary total disability. After 42 days, it pays two-thirds of the wage not to exceed two-thirds of the State's average weekly wage which, as of January 1, 1972, would have set the ceiling at \$91 per week, in contrast to a \$35 a week maxi-

imum in permanent partial disability, if not serious. If an award is under a section of the law covering serious disability, the maximum can go as high as \$65 per week.

That exception aside, 16 jurisdictions have a permanent partial disability maximum less than the temporary total. In the other jurisdictions, maximum payments per week are the same in both categories. In some others, the differences are slight. In Vermont, no dependents' benefits are paid for permanent partial disability: otherwise the maximum is based on one-half of the State's average weekly wage, setting a ceiling as of January 1, 1972, at \$65. Although Vermont will pay \$3.50 per week for each dependent child under 21 in the case of temporary total, it will omit this dependent's benefit in permanent partial cases.

On the other hand, the differences in New Jersey and North Dakota are pronounced. In New Jersey, the maximum as of January 1, 1972, for temporary-total disability was \$101 a week because of an escalator clause which keeps this maximum payment in accord with changes in the State's average weekly wage. No such escalator clause applies to permanent-partial disabilities. The legislature has not changed that maximum for several years; it remains at \$40 per week.

Duration of benefits.—The duration of certain injury benefits is presumed to be set by the schedule. Nevertheless, an administrator must exercise judgment when the award is for the loss of use of a member, not always an open and shut decision. The decision is especially difficult if there is a partial loss and the percentage of loss of use must be evaluated. For loss of a foot by amputation, the duration would be determined readily by the schedule, which in Alabama, calls for 139 weeks; in Arizona, 173 weeks; or in Wisconsin, 250 weeks. In contrast, when there is a loss of use of the foot or a portion of the foot, someone has to determine the degree of loss and its permanence. Such decisions introduce an element of uncertainty into the functioning of the schedules.

Nonscheduled Injuries

Schedules in the several States as noted, usually are confined to the extremities and to sight and hearing. They do not ordinarily include psychiatric ailments, skin diseases, heart and vascular ailments, or occupational diseases except as they

result in the loss of use of a member. Soft tissue injuries to the back or injuries to the trunk are not covered. Such disabilities must be evaluated in some other way.

The IAIABC Permanent Partial Disabilities Committee cites three bases for compensating for occupational injuries which are not scheduled: (1) wage loss theory, (2) loss of wage-earning capacity theory, and (3) permanent bodily impairment theory.³

It is not possible to identify the operation of such clear-cut philosophies in the States, although in New Jersey, the permanent bodily impairment rule governs. As New Jersey's schedule lists the number of weeks for the losses of specified members, the law provides that, for unscheduled injuries, disability will be rated as a percentage of total and permanent disability. The number of weeks of compensation is to be based on the appropriate percentage of 550 weeks.

The worker in New Jersey can collect such an award for neuroses, arthritis, loss of a testicle, sacroiliac strain, and so forth, provided he can show that the impairment was work-connected. He need not demonstrate that he has suffered any loss of time at work. The exact percentage he will be awarded will be as agreed to by his employer or as determined by the compensation agency. In the usual case in New Jersey, the extent of disability is a source of controversy. The employee seeks to maximize the extent of disability and the employer to minimize it. Usually a referee or a judge of compensation sets the percentage after a hearing, which may include testimony by physicians.

The situation in New Jersey contrasts with States where physical impairment per se is ignored and where awards are based on wage loss. Arizona will pay compensation equal to 55 percent of the difference between a worker's average wage before the accident" and the amount which represents his reduced monthly earning capacity resulting from the disability."⁴ In evaluating wage-earning capacity, the Arizona statute instructs the workmen's compensation agency to consider among other things, previous disability, age, occupational history, the nature and extent of the physical impairment, and the type of the work the employee is able to perform subsequent to the injury. The law also requires the employee to report annually to the

Commission his earnings for the prior 12-month period.

New York's law schedules the usual parts of the body and provides that the employee shall be paid 66 $\frac{2}{3}$ percent of his wage for the number of weeks payable for loss of hearing and vision and specifically provides that the Board may award "proper and equitable" compensation not to exceed a specified maximum amount in case of certain described disfigurements. Having provided for these scheduled and quasi-scheduled awards, the New York law goes on to state:

In all other cases of this class of disability, the compensation shall be 66 $\frac{2}{3}$ percent of the difference between his average wages and his wage-earning capacity thereafter in the same employment or otherwise, payable during the continuance of such partial disability, but subject to reconsideration of the degree of such impairment by the board on its own motion or upon application of any party in interest.⁵

Weekly benefit.—The weekly benefit in the nonscheduled injuries is based upon the percentage of wages, as it is in the permanent partial-scheduled disabilities or any of the other benefits. The benefit will be subject to a minimum and a maximum although some jurisdictions will not specify any minimum benefit in the nonscheduled permanent partial. As indicated above, some jurisdictions do not specify a minimum for scheduled injuries. Of those that do, 14 have no minimum for a nonscheduled injury: viz, Alabama, Connecticut, District of Columbia, Minnesota, Montana, Nebraska, South Carolina, Ohio, Pennsylvania, South Carolina, South Dakota, Texas, Virginia, and the Longshoremen's Act.

A jurisdiction which adheres seriously to a wage loss concept cannot logically accept the notion of a statutory minimum, although this combination occurs. Logically, a wage loss is the difference between the wage the employee earns after injury and what he would have earned had he not been injured. When one considers that this loss may be small and that injured workers are entitled to only a percentage of the loss, there appears to be no role for a minimum comparable to that for temporary total disability.

The maximums for the nonscheduled injuries tend to be the same as the maximums for the scheduled injuries although there are differences. Penn-

sylvania, for example, which provides for a \$60 maximum in scheduled injuries provides for a \$45 maximum in nonscheduled. In contrast, Rhode Island provides a higher maximum for the nonscheduled than for the scheduled, partly because the replacement percentage is 50 in the case of scheduled injuries and 66 $\frac{2}{3}$ for nonscheduled injuries.

In addition to the weekly maximum payments, some jurisdictions prescribe total maximums. Alaska, for example, provides for a \$20,000 maximum for scheduled injuries and a \$17,000 maximum for nonscheduled injuries. Although only 22 jurisdictions state a dollar maximum, the number may be deceptively low. New Jersey, for example, has no specifically stated maximum but it has a maximum number of weeks for nonscheduled injuries and a maximum weekly payment, a combination which effectively sets an aggregate dollar maximum.

Adequacy of Benefits

Variations in benefit philosophies.—It is difficult to compare the adequacy of State benefits. Although States that compensate on the basis of physical impairment pay a specified loss, there is no standard of adequacy. Attempts to measure benefits paid against the wage loss occasioned by the physical loss are frustrated by an absence of data. No reliable empirical investigations have measured the wage loss suffered by reason of particular physical impairments. Theoretically, California's law, which does take into account occupation, injury, and age of the worker, matches wage loss and benefits in some consistent fashion, but in a mass production program where thousands of cases are processed each year, some averaging is necessary and efficient. Consequently, data are not available to approximate wage loss in some average fashion.

It is possible to construct a hypothetical case of a worker who is 35 years old with a wife and two children and who earned the average wage in his State. (The same average wage will be used as presented in temporary total disability comparisons rounded off to the nearest \$500.) The average wage, it will be assumed, will increase until he reaches age 65 when he retires. If such a worker suffers an injury which leaves him 50 percent disabled, however that condition is defined in each

State, and if he returns to work able to earn only one-half of what he earned had he not been injured, his theoretical wage loss can be calculated.

In some States it is relatively easy to calculate his benefits. For example, in New Jersey he will receive an award of 50 percent of 550 weeks or 275 weeks; at his assumed wage, he is able to qualify for the maximum in New Jersey of \$40 a week. His total benefit will be \$40 a week times 275 weeks or \$11,000. The present value of these sums at a 6 percent rate of discount is \$9,184, a sum which contrasts with an assumed wage loss of \$67,442. His benefit in New Jersey therefore, is 13.6 percent of his loss.

Unfortunately, it is not so easy to figure the benefits in most States. If one could accept at face value the statutory provisions in the wage loss States, then the worker would receive exactly two-thirds or some stated percentage of his wage loss. Such an exact adjustment would mean allowing the case to remain open for 30 years or until the worker retires from the labor market. If such results did obtain in these wage loss States, the worker would fare much better than in the jurisdictions where the award is based on some specified number of weeks for the physical impairment or where the award is limited by some maximums. There is no way to test the extent to which States which emphasize wage loss concepts and which have no limits actually make awards on this basis.

Table 9.1 presents what data are available for the States where, because of the specific provisions or the limitations in the law, benefits can be calculated. These benefits are contrasted with the assumed wage loss in order to arrive at the percentage loss figure.

Table 9.1.—PERMANENT PARTIAL DISABILITY BENEFITS PAYABLE TO A WORKER WHO IS 50 PERCENT DISABLED¹

Jurisdiction	Benefit for worker earning State's AWW ²	Present value of this benefit	Wage loss ³	Present value of benefits as a percent value of loss
Alabama.....	\$12,180	\$10,037	\$55,619	18.0
Alaska.....				
Arizona.....				
Arkansas.....	11,025	9,451	47,614	19.8
California.....				
Colorado.....	16,835	12,731	63,166	20.2
Connecticut.....				
Delaware.....	15,480	12,756	67,442	18.9
Florida.....	14,175	11,379	59,442	19.1
Georgia.....	12,000	9,788	55,619	17.6

See footnotes at end of table.

TABLE 9.1.—PERMANENT PARTIAL DISABILITY BENEFITS PAYABLE TO A WORKER WHO IS 50 PERCENT DISABLED¹—Continued

Jurisdiction	Benefit for worker earning State's AWW ²	Present value of this benefit	Wage loss ³	Present value of benefits as a percent of present value of loss
Hawaii.....				
Idaho.....				
Illinois.....				
Indiana.....				
Iowa.....				
Kansas.....	15,562	12,108	55,619	21.8
Kentucky.....	18,000	14,078	59,442	23.7
Louisiana.....	13,162	10,849	59,442	18.2
Maine.....	12,521	10,182	51,619	19.7
Maryland.....				
Massachusetts.....				
Michigan.....				
Minnesota.....				
Mississippi.....	15,000	11,588	47,614	24.3
Missouri.....				
Montana.....	18,000	13,374	51,619	25.9
Nebraska.....	12,562	10,354	55,619	18.6
Nevada.....				
New Hampshire.....	14,219	11,466	55,619	20.6
New Jersey.....	11,000	9,184	67,442	13.6
New Mexico.....				
New York.....				
North Carolina.....	10,350	8,529	51,619	16.5
North Dakota.....	7,875	6,664	51,619	12.9
Ohio.....				
Oklahoma.....	12,500	10,578	55,619	19.0
Oregon.....	11,200	10,101	59,442	17.0
Pennsylvania.....	15,750	12,643	63,166	20.0
Rhode Island.....				
South Carolina.....	10,350	8,529	51,619	16.5
South Dakota.....				
Tennessee.....	16,250	12,701	55,619	22.8
Texas.....	12,150	10,012	59,442	16.8
Utah.....	15,444	12,656	51,619	24.5
Vermont.....	11,138	9,033	59,442	15.2
Virginia.....	18,750	13,932	55,619	25.0
Washington.....				
West Virginia.....	15,510	13,482	63,166	21.3
Wisconsin.....	25,000	18,576	63,166	29.4
Wyoming.....				
American Samoa.....				
District of Columbia ⁴	24,000	18,142	67,442	26.9
Guam.....				
Puerto Rico.....				
Trust Territory of the Pacific Islands: Virgin Islands.....				
Federal Employees Compensation Act.....				
Longshoremen's ⁴				

¹ The case of the 35-year-old worker, with a wife and 2 children, who is earning the average weekly wage in his jurisdiction.

² Average weekly wage.

³ This is the approximate wage loss for the worker in each jurisdiction. It is $\frac{1}{2}$ the estimated net wage loss calculated in the death benefit case for a worker earning the average weekly wage in the State. The estimates are approximate because while the gross loss for permanent partial would be $\frac{1}{2}$ the gross loss for death cases, due to the progressivity of Federal income taxes, the net losses do not bear exactly the same relationship.

⁴ The benefits for the District of Columbia and Longshoremen's Act are identical.

Source: The benefits data are derived from individual State statutes and various sources including unpublished data of the U.S. Department of Labor, Employment Standards Administration.

SUMMARY

Present value of benefits as percent of present value of loss	Number of jurisdictions	Present value of benefits as percent of present value of loss	Number of jurisdictions
30 to 39.....	0	0 to 9.....	0
20 to 29.....	13		
10 to 19.....	16	Total.....	29

Evaluations of the adequacy or equity in permanent partial disability cases must be interpreted with care. Although variations in the State laws are apparent, in order to compare adequacy and equity, it is necessary to measure relative values in the way States interpret the provisions of their laws.

DEATH BENEFITS

Eligible Survivors

When a worker is killed in an occupational accident, the laws provide for benefits to survivors. First come the widow and children and, in some States, wholly dependent widowers. These dependents receive a specified portion of the worker's wage. A second class of survivors who may become eligible for benefits under some laws include dependent parents and dependent brothers and sisters. The legal variations are endless.

California will award to partial dependents a sum four times the amount annually devoted to support them but not to exceed \$15,000. Florida's law provides for a percentage to the widow or dependent widower and to the children but, if there is no widow or widower, amounts can be allocated to parents and to brothers, sisters, or grandchildren, limited by the maximum percentage of wages. In some States, the exact relationship of survivors to the deceased is not specified: the law merely provides for payments to those who were dependent upon the worker. The specified percentage of wages may be paid for one dependent and increased for each additional dependent up to a certain limit, and then distributed on the basis of proportionate dependency. Other States will provide for partial dependents and will distribute in proportion to dependency.

In the discussion that follows, for the most part, survivor benefits are considered in relation to widows and children to the exclusion of the second category of survivors, because the contingency and

sharing provisions complicate a relatively simple discussion.⁶

In the event that there are no dependents, the laws in some States will provide for payment of a certain amount to a special fund such as the second-injury fund. This may be a token amount or, as in South Carolina, it may be the commuted amount of the maximum death award which is paid to the industrial commission for a special fund.

In addition to the periodic payments, four states will pay a modest lump-sum payment in addition to regular income benefits. Burial allowances are provided in each State except Oklahoma, subject to a specified maximum. In several jurisdictions, burial allowances are awarded only if there are no dependents. Oklahoma will allow a flat amount of \$1,000 to the decendant's estate if there are no dependents.

In some States, if a widow remarries prior to the expiration of her benefit period, she may be entitled to a lump sum. This is designed to encourage widows to remarry and to soften the impact of the loss of the widow's benefits upon her remarriage.

Percentage of Wage Replaced

If where only a widow survives, the percentage of the deceased worker's wage to which she becomes entitled is shown in table 9.2. In 10 jurisdictions out of the 54 for which we have information, no percentage of wage is specified. Instead some other provision is made for payment, usually a flat rate not based upon the employee's wage. In California, the flat amount of either \$20,000 or \$23,000 is paid. The lower figure pertains if only a widow survives. In Kansas, the awards are based upon 3 years average earnings of the employee with a maximum of \$18,500 and a minimum of \$2,500. Even as some States will deduct temporary total disability benefits from that paid for permanent total disability, so will some States deduct from the survivors' benefits the indemnity payments made to a worker prior to his death.

Except for these 10 jurisdictions, each of the others for which information is available specify an amount based on a percent of the employee's wage. They range from a low of 32½ percent of

Table 9.2.—PERCENTAGE OF WAGES REPLACED BY WORKMEN'S COMPENSATION WHEN ONLY WIDOW SURVIVES, 1972

Percentage of wages replaced	Number of jurisdictions	Percentage of wages replaced	Number of jurisdictions
None specified.....	10	55 to 59.....	0
30 to 34.....	1	60 to 64.....	7
35 to 39.....	8	65 to 69.....	12
40 to 44.....	3		
45 to 49.....	2	Total.....	54
50 to 54.....	11		

¹ Includes 50 States, District of Columbia, Puerto Rico, Federal Employees Compensation Act, and Longshoremen's Act.

Source: Unpublished data U.S. Department of Labor, Employment Standards Administration, Jan. 1, 1972.

wages in Louisiana to the 66⅔ percent which is found in 12 States. Perhaps because the worker's consumption expenses need no longer be met, many more States will provide for a lower percentage of wages in death cases than in permanent total disability. Most States are below 55 percent in the replacement category and 12 States are below 45 percent in terms of wages replaced when the widow only survives.

Where the widow survives with children or other eligible dependents, the amounts that will be paid as a percentage of wages tend to go up. Many more States now will pay 66⅔ percent or more of wages. Only 10 will be below 65 percent and these fall into the 60 percent category. At the other end of the scale, Delaware, Illinois, Nevada, and Puerto Rico will replace 80–85 percent. As with the permanent and total disability cases, there will be a weekly minimum and a maximum specified. In addition, there may be a total dollar or duration maximum.

Approximately half of the States provide for payments to the widow during widowhood and to the children until they reach 18 or until they marry. A variation provides for continuation of payment to children beyond 18 if they are physically or mentally incapacitated or incapable of self-support. In certain of the jurisdictions, such as West Virginia, Kansas, Washington, and the Federal Employee's Compensation Act, payment may be continued to dependents for a certain period beyond 18 if they are full-time students.

In jurisdictions which specify a maximum period, the duration may be as low as 300 weeks as in Iowa; 312 weeks in Colorado; 400 weeks in Alabama; 500 weeks in several States, including Indiana, Louisiana, and Michigan, although Michigan

will continue payments to children even though it limits them to the widow. This practice applies also in Delaware. Montana will pay for 600 weeks. Jurisdictions which limit the maximum period also tend to limit the aggregate dollar amount. The maximum period in Florida is 350 weeks: the weekly maximum is \$56 but the total maximum is \$15,000. Therefore, anyone receiving the maximum benefit of \$56 can receive benefits for only 268 weeks, not 350 weeks. Alaska which purports to pay during widowhood, or to children until 19 or remarriage, has a \$20,000 maximum.

Flexible Maximums

West Virginia and North Dakota have statutory maximums for survivor benefits. Except for these two States, all jurisdictions that have flexible maximums in temporary total disability cases retain them for survivors.

Adequacy and Equity Comparisons

Death benefits in workmen's compensation depend upon the percentage of wage replaced, the maximum period, the maximum and the minimum payments per week, and aggregate maximums. One way to sum up these several characteristics is to take a hypothetical 35-year-old worker with a wife and two children. Assume that he is earning the average weekly wage of his jurisdiction and that this wage will increase in accordance with an assumed age earning profile and with a 3 percent annual increase in productivity. If he dies at 35, the wage loss will continue until he reaches the age of 65 at which time it will be assumed he would have retired. The present value of his workmen's compensation benefits can be computed given all of the limitations and this sum contrasted with his assumed wage loss after deductions for income taxes. In calculating this wage loss the sum of \$2,000 per year will be deducted as his assumed consumption allowance.⁷ Table 9.3 shows the present value of workmen's compensation benefits for each State and the present value of these benefits as a percentage of the present value of the loss. As shown in the summary of the table, in 12 jurisdictions out of 51, something less than 20 percent of the wage loss is compensated for. In 29 jurisdictions, the present value of the benefits as a per-

centage of the present value of losses is between 20-40 percent. In one jurisdiction, Maine, it ranges over the 100 percent mark, since we are able to increase benefits each year in accordance with the automatic escalator provisions in the State law.

Table 9.3.—WORKMEN'S COMPENSATION DEATH BENEFITS AND SOCIAL SECURITY BENEFITS CONTRASTED WITH WAGE LOSS¹

Jurisdiction	Present value of workmen's compensation benefits	Present value of workmen's compensation benefits as percent of present value of loss	Present value of workmen's compensation and OASDI benefits	Present value of workmen's compensation and OASDI benefits as percent of present value of loss
Alabama.....	\$17,206	22.9	\$49,658	66.0
Alaska.....	17,652	13.0	51,871	38.1
Arizona.....	49,237	54.5	83,065	92.0
Arkansas.....	30,762	51.9	60,671	102.4
California.....	19,350	19.6	53,569	54.2
Colorado.....	18,857	20.9	52,685	58.3
Connecticut.....	67,999	68.8	102,218	103.4
Delaware.....	25,003	25.3	59,222	59.9
Florida.....	12,581	15.2	45,539	55.0
Georgia.....	13,296	17.7	45,748	60.8
Hawaii.....	27,613	33.3	60,571	73.1
Idaho.....	23,307	34.7	54,411	80.9
Illinois.....	21,000	19.8	55,219	52.0
Indiana.....	22,290	24.7	56,118	62.1
Iowa.....	14,586	17.6	47,544	57.4
Kansas.....	17,117	22.8	49,569	65.9
Kentucky.....	13,108	15.8	46,066	55.6
Louisiana.....	18,112	21.9	51,070	61.6
Maine.....	77,997	116.0	109,101	162.2
Maryland.....	22,626	27.3	55,584	67.1
Massachusetts.....	14,166	15.7	47,994	53.1
Michigan.....	29,971	26.4	64,190	56.5
Minnesota.....	26,803	29.7	60,631	67.1
Mississippi.....	11,886	20.1	41,795	70.6
Missouri.....	18,337	20.3	52,165	57.7
Montana.....	18,027	26.8	49,131	73.1
Nebraska.....	44,378	59.0	76,830	102.1
Nevada.....	34,734	38.4	68,562	75.9
New Hampshire.....	23,029	30.6	55,481	73.7
New Jersey.....	59,807	60.5	94,026	95.1
New Mexico.....	20,465	30.4	51,569	76.7
New York.....	43,715	41.1	77,934	73.3
North Carolina.....	15,733	23.4	46,837	69.6
North Dakota.....	22,160	33.0	53,264	79.2
Ohio.....	18,982	19.2	53,201	58.3
Oklahoma.....	22,000	29.2	54,452	72.4
Oregon.....	32,211	38.9	65,169	78.7
Pennsylvania.....	33,574	37.2	67,402	74.6
Rhode Island.....	31,506	41.9	63,958	85.0
South Carolina.....	10,578	15.7	41,682	62.0
South Dakota.....	23,570	39.8	53,479	90.3
Tennessee.....	17,206	22.9	49,658	66.0
Texas.....	14,093	17.0	47,051	56.8
Utah.....	16,364	24.3	47,468	70.6
Vermont.....	45,312	54.7	78,270	94.5
Virginia.....	19,396	25.8	51,848	68.9
Washington.....	66,940	74.1	100,768	111.5
West Virginia.....	33,460	37.0	67,288	74.5
Wisconsin.....	24,045	26.6	57,873	64.1
Wyoming.....	13,007	19.3	44,111	65.6
American Samoa.....	-----	-----	-----	-----
District of Columbia ² ..	35,902	36.3	70,121	70.9
Guam.....	-----	-----	-----	-----
Puerto Rico.....	18,568	-----	44,322	-----

See footnotes at end of table.

Table 9.3.—WORKMEN'S COMPENSATION DEATH BENEFITS AND SOCIAL SECURITY BENEFITS CONTRASTED WITH WAGE LOSS—Continued

Jurisdiction	Present value of workmen's compensation benefits	Present value of workmen's compensation benefits as percent of present value of loss	Present value of workmen's compensation and OASDI benefits	Present value of workmen's compensation and OASDI benefits as percent of present value of loss
Trust Territory of the Pacific Islands.....	-----	----	-----	----
Virgin Islands.....	-----	----	-----	----
Federal Employees Compensation Act....	-----	----	-----	----
Longshoremen's Act ²	-----	----	-----	----

¹ The case of the 35 year old, with a wife and 2 children, earning the average weekly wage of his jurisdiction.

² The benefits for the District of Columbia and Longshoremen's Act are identical.

Source: The benefits data derived from individual State statutes and various sources including unpublished data of the U.S. Department of Labor, Employment Standards Administration.

SUMMARY

Present value of workmen's compensation benefits as percent of present value of loss:

	Number of jurisdictions
100 percent and above.....	1
80 to 99.9 percent.....	0
60 to 79.9 percent.....	3
40 to 59.9 percent.....	6
20 to 39.9 percent.....	29
0 to 19.9 percent.....	12
Total.....	51

Present value of workmen's compensation benefits and social security benefits as percent of present value of loss:

	Number of jurisdictions
100 percent and above.....	5
80 to 99.9 percent.....	6
60 to 79.9 percent.....	27
40 to 59.9 percent.....	12
20 to 39.9 percent.....	1
0 to 19.9 percent.....	0
Total.....	51

The widow may be eligible to receive social security benefits since she has dependent children in her care. Our assumption is that these children, 9 and 12 years old, remain in her care and eligible for social security until each of them reaches the age of 18. The present value of the combined workmen's compensation and social security benefits are shown in the table together with the ratio of these benefits to the present value of the loss. With this addition, the family's situation improves. Five States are in the 100 percent and above bracket, six States in the 80–100 percent bracket, and 27 States, in the 60–80 percent bracket. Only one State falls into the 20–40 percent bracket. Although there are still 13 States where benefits on a combined basis are not up to 60 percent of the loss, still, in more than half of the jurisdictions, benefits on a com-

bined basis become adequate if the percentage of wage loss restored is the relevant test.

A number of factors will influence the adequacy of the survivor's benefit. In general, the younger the worker is at the age of his death, the less his survivors receive in relation to replacement of wages. Assuming identical wages in each State and the same family composition, 29 States will replace less than 20 percent of the lost wages of a 25-year-old craftsman, whereas for a 46-year-old craftsman, this number falls to 13. Limitations on the duration of workmen's compensation benefits are the main factor in the disadvantage of the younger survivors.

OTHER CRITERIA

Certainty

Workmen's compensation was hailed as an innovation which would introduce a great deal of certainty in the calculation and payment of benefits, in contrast to the common law system. Although a worker who could sue and recover might be assured of an adequate payment, those who lost would be left with nothing but debts. To reduce uncertainty, the workmen's compensation law specified the benefits which would be paid to all regardless of fault. Although the outcome of workmen's compensation cases is far more certain than the ordinary suit where negligence must be shown, the law is not automatically applied.

In part, the uncertainty stems from the variety of the permanent partial disability cases which the schedules do not cover satisfactorily. Two factors give rise to compensation litigation. One is the uncertainty as to whether an accident did or did not rise out of and in the course of employment; the other is the extent of disability. As workmen's compensation comes to encompass more and more of the ailments to which the general population might be susceptible, it becomes difficult to separate impairments that are work-connected from those that are not. In addition, it requires an exercise of legal skills and medical judgment to assess the extent of disability in occupational diseases, injuries to the soft tissue of the back, heart conditions, or cases where the only evidence before the commission may be a subjective complaint (see ch. 12).

This uncertainty about liability and extent of disability has bred a certain amount of litigation that persons who drafted the original laws did not anticipate. The contested cases, as a percentage of all cases, vary from State to State but litigation certainly has not disappeared from the compensation system.

Certainty has also been effected in some extent by the security requirements. In the typical jurisdiction, the employer is required to make appropriate insurance arrangements. The State may assure payment where it assumes responsibility for managing the insurance fund on a competitive or exclusive basis, but where the employer is required to self-insure or purchase a policy from a commercial carrier, there is a risk that carriers or employers may become insolvent. State officials have the duty of policing the system to see that the employer insures and that insurers or self-insurers are financially sound. There are no data to indicate how many workers do not receive payment in the event of bankruptcy of an employer or insolvency of a carrier, although some States provide for contingency funds for such defaults (see ch. 15).

Promptness of Payment

In general, there are two philosophies about payment of initial claims. In some States, the employer is required to begin payment promptly once he has notice of an injury. In other States, an agreement is necessary before a claim need be paid. How promptly employers or insurance carriers pay in most States is not known. The record appears to be satisfactory in Wisconsin and New York, where payments are under surveillance. Other States collect no such information. An insurer's efficiency in this matter depends upon how much business an insurer has in a State and how extensive a service organization it maintains.

Lump-Sum Benefits and Reopened Cases

The provisions in the law providing for periodic payment of workmen's compensation benefits may be frustrated by the closing out of cases on a compromise and release basis. When there is some question as to the liability of the employer, it may be reasonable to compromise the issue and close the case. However, in some jurisdictions apparently a

high percentage, perhaps even a majority of converted cases, tend to be closed out by some compromise and release settlement. The tendency is especially strong where the wage loss philosophy may provide a continuing liability for permanent disability (see ch. 14).

CONCLUSION

Workmen's compensation permanent partial disability benefits are the least duplicated benefit of any paid to injured workmen. Chapters 8 and 9 contain ample evidence of the variety of benefit levels for temporary disability, permanent total disability, and death. Nowhere is the variety more apparent than in permanent partial disability. States differ in benefit levels, in relationships among benefits paid to the various types of disabilities, in minimums, maximums, in weeks scheduled for particular losses, and above all in benefit payment philosophies. Not only are twice as many weeks allotted for loss of the use of a member in one jurisdiction than in another, but also what is normally and usually considered, say, 50 percent of loss of use of a member in one jurisdiction may be rated at 25 percent of loss of use in another. A particular residual impairment may rate 50 percent total disability in one State and go uncompensated in another because the employee has lost no wages. In a third jurisdiction the award may be at a different percentage because of an administrative judgment about the estimated loss in wage-earning capacity. Such variety is in addition to the differences in statutory replacement ratios and minimums and maximums on a weekly or aggregate basis.

Because of the difficulty of predicting an award for a standard impairment and because of a lack of knowledge about the relationship between a given impairment and wage loss, we have no consistent and reliable estimates of the adequacy of permanent partial awards. Some estimates were presented on the basis of a 50 percent disability, but these estimates are possible only in States where aggregate limits or rating philosophies permit one to specify the number of weeks which will be paid.

Death benefits are payable to widows and other eligible survivors at a rate which usually is less than that paid in the permanent disability cases. Although a number of jurisdictions provide for

payments during widowhood and until children reach a specified age, some limit the duration of payments.

Adequacy comparisons were based on a hypothetical worker making the average wage in his jurisdiction. The percentage of wage loss replaced in each jurisdiction was shown in the analysis. Certainty of payment, a prime objective of early compensation laws, has not been attained because of the litigation which persists over issues of liability and extent of disability. Promptness of payment, also an early goal, has been attained in some jurisdictions but for most States data on this aspect of administration are not available.

In the compromise and release cases, certainty is attained but often at the expense of closing out all possibility of future recovery should a worker's condition worsen. As most States do not maintain records on postsettlement developments, it is difficult to know how much compromise and release settlements interfere with the basic objectives of the law. In the usual case, the workmen's compensation benefit is paid in periodic installments as wages are paid so that, if the employee's condition changes, the case can be reopened within the period designated in the statute of limitations. The compromise and release settlements, of course, obviate this possibility.

References for Chapter 9

1. An explanation of the California schedule which is different from any other State's can be found in *Report*

of the Workmen's Compensation Study Commission (State of California, April 1965). See chapter 5, "Determining and Rating Permanent Disability." The California rating schedule assumes a hypothetical standard man whose occupation requires the use of all parts of his body with special reference to none. The man is deemed to be 39 years of age and for each 2 years of age over 39 the rating is increased. For each 2 years below that age the rating is decreased. Occupational variants are computed by a table that pairs disability and occupations in accordance with the degree to which the given bodily deficit is a handicap in the performance of a named occupation.

2. The variation in the schedules in terms of number of weeks paid for specified losses in each jurisdiction can be found in U.S. Department of Labor, Wage and Labor Standards Administration, *State Workmen's Compensation Laws*, Bulletin 161, Revised 1969, table 9. The same variation, but stated in terms of dollar amounts rather than weeks of compensation, is presented in chart 5 in U.S. Chamber of Commerce, *Analysis of Workmen's Compensation Laws*, 1972 edition.
3. Report of the Permanent-Partial Disabilities Committee, in 1966 *Convention Proceedings of IAIABC*, page 35.
4. Arizona Revised Statutes, 23-1044 (21-C).
5. New York Workmen's Compensation Law, section 15, (3) (w).
6. A discussion of some of the problems in defining dependency in the case of a death are to be found in Larson's "Discussion of Income Benefits for Death", *Workmen's Compensation and Rehabilitation Law* (Chicago, Ill.: Council of State Governments 1965) section 18, page 131.
7. The details of the calculations, some of the problems that are involved can be found in "Supplemental Study—Income Benefits", chapter 4.