

SB

322

(FILE 10)

**STATE OF ALASKA
DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT
DIVISION OF INSURANCE
P. O. BOX D
JUNEAU, ALASKA 99811**

ORDER 86-3

**Re: Revised Workers' Compensation Insurance Rates Effective
January 1, 1987.**

**To: The National Council on Compensation Insurance.
All Insurers Authorized to Write Workers' Compensation
Insurance in the State of Alaska.
All Interested Parties.**

The Hearing Officer for the Director of Insurance does hereby find as follows:

Background.

1. On November 3, 1986, the Division of Insurance received a filing from the National Council on Compensation Insurance (hereafter NCCI) dated October 31, 1986, which was supplemented with additional data on November 11, 1986. The filing proposed a rate change for workers' compensation insurance rates effective on January 1, 1987 for all new and renewal business.
2. NCCI is a national rating organization licensed by the State of Alaska pursuant to AS 21.39.060. It does statistical compilation of data, including premium, payroll, loss and expense data, on behalf of its member and subscriber insurers. It makes rate and policy form filings with the State of Alaska on behalf of its member and subscriber insurers.

3. In view of the significance of the impact of the proposed filing on the Alaska economy, a hearing was deemed necessary to afford the public an opportunity to present its views on the filing and to receive any information that would tend to place in question any of the data or assumptions underlying the proposed filing. Notice was prepared and mailed to all insurers licensed in Alaska and to the Alaska Chapter of the Associated General Contractors. In addition, notice was published in the Anchorage Daily News and in the Alaska Journal of Commerce. The hearing was held at the Federal Building in Anchorage on November 24 & 25, 1986.

The Proposed Filing

4. The overall average increase in statewide premium level resulting from implementation of the proposed filing is an increase of 14.3%. The components of the increase are as follows:

<input type="checkbox"/>	increase due to experience.....	+13.3%
<input type="checkbox"/>	reduction for change in premium tax.....	-00.2%
<input type="checkbox"/>	increase due to change in trending for medical losses.....	+01.7%
<input type="checkbox"/>	reduction to offset previous increase of the workers compensation pool surcharge from 10% to 20% resulting in a reduced subsidy of pool business by that business in the voluntary market.....	-00.6%

5. The overall average is further broken down into four (4) major industry groupings, each with a different impact from the filing reflecting that groups' contribution to the loss level. Within the groups, individual classifications can move by $\pm 25\%$ from the group overall indication, further reflecting the particular experience of the individual classification. The four groups, the indicated rate change by group, and the range of rate movement for classifications in each group are:

<u>GROUP</u>	<u>IMPACT</u>	<u>RANGE of IMPACT</u>
Manufacturing	+1.8%	+27.0% to -23.0%
Contracting	+20.5%	+46.0% to -4.0%
Oil & Gas	+7.4%	+33.0% to -17.0%
All Other	+13.3%	+39.0% to -11.0%

6. There are a total of 546 classifications used in the NCCI classification manual. Of the 546 classifications, 434 classifications had some payroll for the period used to determine classification relativity in Alaska. Of that 434 classifications, 116 classifications had more than \$10 million of payroll in Alaska. The total numbers of classifications in the manual by industry group are:

GROUP	TOTAL NCCI CLASSES	SOME ALASKA PAYROLL	+10 MILLION ALASKA PAYROLL
Manufacturing	294.	102.	7
Contracting	67.	63.	27
Oil & Gas	11.	11.	7
All Other	174.	158.	75

7. The effect of the change proposal on some classes is significant. This can be seen from the listing of classifications in Attachment #1 in which the impact of this filing is noted. The classifications listed in Attachment #1, each had Alaska payroll in excess of \$10,000,000 during the period beginning April 1, 1981 and ending March 31, 1984.
8. The filing is not unusual in terms of past filings or in the methodology utilized. The filing follows methods that have been used in the past in this state and found to be acceptable in past reviews. It is, in a sense, routine.

History.

9. Since 1974, the Division of Insurance, Market Surveillance Section has closely monitored workers' compensation insurance experience of insurers writing that line of insurance in Alaska. The purpose was to measure competition and to develop an independent base with which to measure the proposals of NCCI. By applying Division of Insurance devised formulas and tests to this base information, which is limited in its sophistication, the Division of Insurance has generally been able to predict rate changes within two or three percent of the actual proposal and to do so about six months before a filing is proposed. Since this approach does lack sophistication and is not accurate to

the degree desirable for ratemaking purposes, the results of these tests have not been widely publicized. One concern is that the tests done by the Division of Insurance should not be available for potential use by insurers as part of the support for rate change proposals.

10. In July 1986, the Alaska Department of Labor released a publication titled "Occupational Injury and Illness Information - Alaska 1984" which contains data of interest to those concerned with the cost level for workers' compensation insurance. The publication notes that Alaska has one of the highest rates in the nation for industrial illness and injury. Not surprisingly, the publication notes a number of highlights which tend to provide some clues concerning why the rating structure is responding in the proposed manner. These include:

- The Alaska Division of Workers' Compensation processed 11,398 time loss claims for 1984, an increase of 5% over 1983.
- The construction industry leads all others in the number of reported time loss cases (2,680) accounting for 23.5% of all cases.
- Craftsmen, laborers, and operatives (excluding transport) are consistently the leading occupational groups for time loss cases, with nearly two-thirds ($\frac{2}{3}$) of all cases.
- Sprains and strains continue to be the leading nature of injury (48.3% of the total).
- The back is historically the most frequently injured part of the body and is involved in one-fourth ($\frac{1}{4}$) of all time loss cases. Strains and sprains are the most common result of back injuries.

Reasons for why Alaska has become an increasingly dangerous place to work as compared to other areas is not fully understood. The publication reports incidence rates of recordable occupational injuries and illnesses by group as follows:

- 9.7 cases per 100 workers in Alaska;
- 43.0 cases per 100 workers in Lumber and Wood Products;
- 25.0 cases per 100 workers in Food and Kindred Products;
- 24.2 cases per 100 workers in Trucking and Warehousing;
- 22.6 cases per 100 workers in Building Materials, Retail;
- 22.0 cases per 100 workers in Oil & Gas Field Services; and,
- 17.7 cases per 100 workers in Building Construction;

11. Utilizing the process noted in § 9, it was noted in June 1986 that there was a likelihood of a significant filing to be effective on January 1, 1987. At that time the Market Surveillance Section concluded that a 21.5% overall premium level increase would be needed and that due to data anomalies the true need was probably closer to 30%. The data anomalies referred to, are the impacts of reserve strengthening attributable to prior years. In effect, we have either overstated the need by more than 7 percent or conversely, NCCI has filed a filing that is insufficient to meet needs by at least 7 percent.
12. During testimony given by NCCI, their actuary admitted that the 20.5% indication for the Contracting group should actually have been 26.6%. The 26.6% indication was tempered with the lower 20.5% indication because of some concern by NCCI that the data producing the higher result, might somehow be a ripple that would drive the rates higher than necessary.

Rate-making.

13. The rate-making process is generally a mathematically based exercise that, while very complex, is not mysterious. In 1981, NCCI published a 12 page booklet titled, "Rate-making...The Pricing of Workers' Compensation Insurance". It would not be practical to recite much of the data contained in that document, though the temptation is great. It is an excellent primer on just what goes into the making of workers' compensation insurance rates, and it is of such value that it accompanies this order as Attachment #2.

Role of Division of Insurance.

14. When the Division of Insurance receives an insurance rate filing from an insurance company or a rating organization such as NCCI, it does so under AS 21.39.040 which provides statutory standing for the filer, review time limitations for the state, and references standards used to determine whether a filing may be approved or disapproved. The standards found in AS 21.39.030 provide that the rates shall not be excessive, shall not be inadequate, and shall not be unfairly

discriminatory. NCCI has not made a substantial departure from its past methodology in this filing, so the methodology is one that has been accepted and tested in the past as well as at this juncture. The documentation supports the contention that the current rate structure is inadequate. In fact the independent data developed by the Division of Insurance suggests that the proposed level itself may not be sufficient to meet expected losses.

15. The standards set forth in the rate law (AS 21.39) do not provide for the application of political or economic considerations when reviewing a rate filing. The law was specifically designed to avoid just that occurrence. Viewing it from these considerations, the proposed filing could not have come at a worse time. The economy is currently devastated by the instability of oil prices and is experiencing an apparent "bust." Politically, there are the usual unknowns experienced when the administration of state government changes. These place pressures on such a filing which while recognized, can not be considered under the law.
16. The Division of Insurance does not influence the benefits available under the Alaska Workers' Compensation Act. Those are established by the legislature and administered by the Alaska Workers' Compensation Board (hereafter Board). The Board generally becomes involved only with the specific request of the claimant, but the Division of Insurance can not. There is one additional party regularly appearing on the scene, again via the claimant, and that is the court system.
17. The Division of Insurance does not deal with individual consumer complaints involving workers' compensation insurance. These are all referred to the Board. The Division of Insurance can deal with trade practices when a series of abuses become known to the Division. To this end there is a cooperative effort currently under way between the Division of Workers' Compensation in the Department of Labor (administrative arm of the Board) and the Division of Insurance.
18. When the Legislature addresses an issue relating to workers' compensation insurance, the role of the Division of Insurance is to attempt, through NCCI, to determine the price impact of the proposed legislation. The Division of Insurance does not and should not take an

advocacy posture as respects changes to the benefit structure in the Alaska Workers' Compensation Act.

19. The Division of Insurance does have a strong role in the efficiency of operation of the rating systems utilized by insurers writing workers' compensation insurance. It has a strong interest in factors that affect the data base from which rates are derived. It is concerned with issues that can influence the accuracy of the data base underlying the rate structure. Because of these interests and concerns, the Division of Insurance wants to:

- assure the proper reporting and gathering of payroll data;
- assure the proper and equitable application of the filed classification system; and,
- assure the proper conduct of persons writing coverage for an employers workers' compensation liability.

Public Frustration with System

20. During the public hearing held as noted in § 3, witnesses testified to some of the frustrations experienced. In many cases, the Division of Insurance does not have jurisdiction to address the kind of problem described. Numerous issues were discussed in the hearing and more in correspondence and in telephonic communications. Many times, the extent of recognition of these problems is the stereotypical comment, "it's not my job." While to a great extent that may be true of the issues witnesses have brought to us in this hearing, we would prefer to at least describe the issues for the benefit of those who may be in a position to address them or to dismiss them.

21. Workers' Compensation Insurance costs are often a very large part of employer cost. When a problem arises, it is often difficult for an employer to identify a source of assistance. Sometimes the Division of Insurance can help, sometimes the Division of Workers' Compensation can help, but all too often the assistance sought is beyond the capabilities or jurisdiction of either agency. This fosters a sense of frustration in the employer. Examples are:

- trying to determine whether an individual is an independent

contractor or will be held to be an employee;

□ trying to have something done about a claimant who is known to the employer to be malingering or abusing the system; etc.

22. Contractors are stuck in a particularly difficult situation because they often bid work to be done in a period for which the workers' compensation insurance rate is not yet known. If there is a dramatic unanticipated change in the rate, the impact can be destructive. Other industries are similarly affected but none so broadly as contracting. In the current proposal, some contracting rates are proposed to rise as much as 46.0%.
23. Fraud does occur in this kind of insurance and is one of the things that tend to frustrate employers who see the system abused, but prosecution of the cases is difficult to stimulate. The Division of Insurance has completed investigation on four cases that are currently awaiting prosecution, and according to the Division's Investigator, the total amount that is alleged to have been improperly acquired is about \$380,000. Vigorous prosecution and publication of such fraud cases should help to act as a deterrent to such activity.
24. Testimony from several witnesses addressed the disparity between rates charged in Alaska and in other jurisdictions. They face competition from persons in those jurisdictions who either do not elect to comply with Alaska law or believe incorrectly that their existing policy will extend to provide Alaska benefits. The advantage that this can give to the noncomplying contractor can be profound.
25. Those operators who operate with injury incident rates far below their peers are to a great extent subsidizing those operators who for whatever reasons have the losses. That, of course, is part of the principle of insurance, the spreading of the losses of the few amongst the many. When a kind of insurance is as expensive as is workers' compensation insurance has come to be in Alaska, the usual explanation of the "principles of insurance" or "the law of large numbers" merely adds fuel to the fire no matter how true. The question has been posed, why does the state continue to allow the bad operator to continue to hurt people and continue to dig into other employers' pockets. To a small degree, insurer selection or underwriting tends to force such employers into the assigned risk

plan, but that market too is subsidized by all other employers. The current level of subsidy is about 13%.

26. The most persistent complaint from contractors is that it is imperative that they be given adequate notice of the changes. The definition of adequate notice was on the order of 6 to 12 months. The fact is, that there has never been more notice of a change than in the current instance. Notice was posted in early November. Typically the rates in the past have changed with less than 30 days notice. The change applies to new policies and to existing policies only when they renew which could be as late as December 31, 1987.

The Division of Insurance has also advised the NCCI that future filings would likewise require a minimum of 60 days of lead time rather than rely on the 15 days stated in the statute for review

27. A common thread throughout the testimony was that since the Alaska contractor has to tighten his belt the insurance companies should do likewise. However, the workers compensation insurance line is one that has given insurers particular grief in this state over the years and experience in recent years has been dismal. Alaska is currently being subsidized by the results of other lines and that does not attract new carriers in the marketplace or encourage those already there to continue previous levels of activity. One support for to this comment is the increase in pool writings by over 300% in one year. This view tends to look upon insurers as the cause or the "illness" when in fact it is merely the symptom or reflection of the underlying problem.
28. When a rate increase such as this goes into effect, it applies to new and renewal business as has already been noted. This fact itself offers both pain for some and relief for others depending on when the particular employers' policy expires and whether the change is an increase or a decrease. It impacts the cost effectiveness of an employer depending at what point he is bidding a job and whether his workers' compensation insurance costs for the period bid are known when bidding. The cure for that may be worse than the "illness" it intends to cure. One solution would be to have the rates all change at the same time. In other words a rate change would apply to in-force policies. This would be cumbersome. It would probably require a law

change. Part of the solution might be to have all policies expire on the same date. That too would require legislation.

29. A portion of the testimony leveled criticism at the Board and at the courts for its "liberal" view of the Act. Many felt that the system is out of balance and is too one-sided favoring the claimant.
30. A substantial portion of the loss dollar is directly attributable to medical care. There has been some concern over the sometimes experienced reluctance by physicians to issue return to work notices. The reluctance is due in part to fear that the action may generate a charge of malpractice thus intensifying an already difficult situation for the physician. In other cases, the expression "ambulance chaser" has been used with some charity.
31. One witness asserted that the enforcement efforts of the Division of Workers' Compensation concerning compliance with the Act are inadequate, contending that that effort ought to be at least tripled.
32. The legal expense component of the workers' compensation insurance premium has grown over the years beyond the level anticipated. Claimants are growing increasingly litigious in a system that is intended to be no-fault. Why this is felt to be necessary, should be examined before it gets out of hand.
33. Several witnesses felt that the rehabilitation system is cumbersome, ineffectual and very expensive.

Conclusions

34. Most of the testimony brought to the Division of Insurance was not to the point of things that could be considered. While the participants to the hearing were uniform as to the effect of the proposal, none were able to offer reasonable refutation of the underlying premise supporting the filing, namely that the increase is necessary to meet expected losses arising from workers' compensation insurance liability in this state.
35. There were repeated requests for delay but nothing on which to

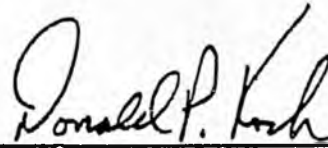
support the granting of such a request, that meshes with the standards that the Division of Insurance must use to test the propriety of the proposal; the tests being that the rates shall not be inadequate and the rates shall not be excessive. It is recognized that the proposal will not bode well for those impacted with substantial upward increases.

36. Arguments were made concerning the classification system of the NCCI, labeling it as arbitrary. The system is a key element to the insurance system in this state, and in most other states. It is not perfect but it is responsive. It has been under close scrutiny by the Alaska Division of Insurance since the issue of Order 76-1 on February 17, 1976. There is a good deal of fine tuning going on and Alaska has had a hand in that process. These arguments are rejected as uninformed and unsupported. In 1982, NCCI published a 12 page booklet titled, "**Classification is Fundamental to Workers' Compensation Insurance.**" Again, this publication does a much better job of explaining the classification system, its reasons for existence, and its underlying logic, than this hearing officer can produce. For this reason, it accompanies this order as Attachment #3.
37. Rates filed by the NCCI should be as nearly reflective of needed premium levels as possible. The review of the filing done by the Division of Insurance and the separate review of indications support the filing as made.

The Hearing Officer for the Director of Insurance does Hereby Recommend Adoption of the Following Order:

- A. The rates promulgated by NCCI to be effective on January 1, 1987 are not excessive and for that reason are approved.
- B. A copy of this order is to be sent to the Governor of the State of Alaska, to the Alaska Workers' Compensation Board, to the legislative oversight committees for issues relating to workers' compensation (the Labor and Commerce Committees of the House and the Senate), to the National Council on Compensation Insurance, and to other interested parties.

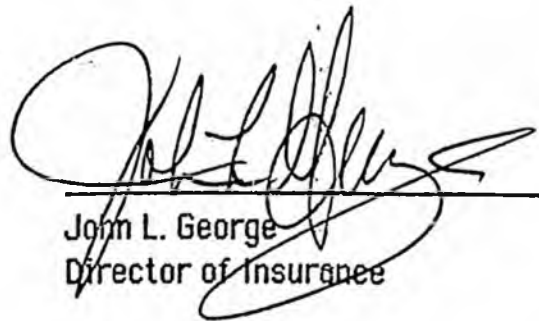
Done this 16th day of December, 1986.



Donald P. Koch
Hearing Officer

The Director of Insurance Hereby adopts the order of the Hearing Officer and approves the October 31, 1986 filing of the NCCI for workers' compensation insurance rates effective on January 1, 1987.

Done this 16th day of December, 1986.



John L. George
Director of Insurance

ATTACHMENT #1

IMPACT OF RATE FILING ON SPECIFIED CLASSIFICATIONS

7422 Aircraft-Air Taxi-Flying Crew	+16.0%	7540 Elec Light & Power Co-ops Rural	+16.4%
7431 Aircraft-Commuter-Flying Crew	-11.0%	7538 Elec Light or Power Line Constr	+27.6%
7414 Aircraft-Ground Crew	+3.6%	9519 Electrical Appliance Install, Rpr	+14.5%
7405 Aircraft-Scheduled-Flying Crew	-11.0%	5190 Electrical Wiring in Buildings	+37.6%
7421 Aircraft-Trans. of Employees	-11.0%	8610 Engineers or Architects Consulting	-7.1%
7605 Alarm Systems Install & Repair	+31.2%	6217 Excavation NOC	+26.8%
4511 Analytical Chemists	+33.2%	7704 Firemen	+5.6%
8820 Attorney	-10.6%	8044 Furniture Stores	+6.0%
8387 Auto Accessories Service Station	+8.1%	9403 Garbage Collectors	+9.2%
8393 Auto Body Repairing	+24.7%	6319 Gas Mains or Connections Const.	-3.9%
8391 Auto Garages and Repair Shops	+36.6%	8350 Gasoline or Oil Dealers	+39.0%
8748 Automobile Salesmen	-1.8%	8607 Geophysical Exploration NOC	+35.4%
2003 Bakeries	+26.7%	8606 Geophysical Exploration Seismic	+37.1%
9586 Barber Shops, Beauty Parlors	+5.7%	8010 Hardware Stores	+39.0%
7390 Beer or Ale Dealers	+39.0%	9040 Hospital, All Other	+37.7%
9014 Buildings, Oper. by Contrr	+13.5%	8833 Hospital, Professional	+13.7%
9015 Buildings, Oper. by Ownr/Lessee	+34.4%	9052 Hotels	+14.3%
7382 Bus or Taxicab Companies	+38.9%	9058 Hotels-Restaurant Employees	+23.9%
5385 Bus or Taxicab Garage	+9.2%	5479 Insulation Work	+30.3%
2111 Canneries	+25.4%	5057 Iron or Steel Erection NOC	+42.5%
5645 Carpentry Const-Private Resid.	+44.8%	8013 Jewelry Stores	+5.6%
5651 Carpentry Const-Priv. Res. 3 Stor.	+4.0%	8755 Labor Unions	-5.7%
5403 Carpentry NOC	+7.3%	2702 Logging	+11.0%
2803 Carpentry Shop Only	+27.0%	8232 Lumber Yards, All Othr Employees	+39.0%
8810 Clerical Office Employees	-10.6%	8058 Lumber Yards, Store Employees	+24.4%
8008 Clothing or Dry Goods Stores	+0.7%	3632 Machine Shops	+27.0%
9061 Clubs NOC	+14.2%	8107 Machinery Dirs NOC Store/Yard	+23.4%
1005 Coal Mining Surface	-9.8%	5022 Masonry NOC	+12.8%
9101 Colleges, Schools-All Other	+11.5%	3724 Millwright	+45.9%
8868 Colleges, Schools-Professional	0.0%	1165 Mining NOC Surface	+0.7%
9078 Commissary	+38.9%	9410 Municipal or State Employees	+36.2%
5213 Concrete Construction NOC	+37.1%	7502 Natural Gas Companies	+38.8%
5221 Concrete Flrs, Drivways, Sidwks	+16.8%	4304 Newspaper Publishing	+11.2%
6325 Conduit Construction	+4.6%	8829 Nursing Homes	+38.9%
5606 Contractors Executive Supvsrs	+22.7%	5191 Office Machine/Appliance Install	+15.8%
8227 Contractors Permanent Yard	-4.0%	1320 Oil or Gas Lease Operators	-5.3%
8039 Department Stores Retail	+11.0%	6216 Oil or Gas Lease Work by Contr	+33.0%
6204 Drilling NOC	+9.9%	6233 Oil or Gas Pipeline Construction	+19.5%
7380 Drivers, Chauffeurs & Helpers	+38.8%	7515 Oil or Gas Pipeline Operation	-4.8%
7539 Electric Light & Power Co NOC	+7.4%	6206 Oil or Gas Well Cementing	+6.9%

ATTACHMENT #1

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6235 Oil or Gas Wells Drilling/Redrilling	-6.1%	8292 Storage Warehouses, Genl Merch	-11.0%
6237 Oil or Gas Wells Logging/Survey	+33.0%	8017 Store Risks NOC Retail	+3.5%
3719 Oil Still Erection or Repair	+7.3%	8018 Store Risks Wholesale	+8.0%
5474 Painting or Paper Hanging NOC	+13.9%	8033 Stores Meat Comb Grocery Rtl	+15.7%
4371 Photographers	+13.8%	9402 Street Cleaning	+13.3%
8833 Physicians	+4.2%	5507 Street or Road Construction	-4.0%
5183 Plumbing NOC	+21.6%	5506 Street or Road Construction	-4.0%
7720 Policemen	+4.9%	7600 Telephone & Telegraph Cos.	+29.1%
4299 Printing	+21.3%	8901 Telephone & Telegraph, Off Empl	+33.3%
8835 Public Health Nursing Assns	+0.7%	8803 Traveling Auditors, Accountants	+13.8%
7610 Radio & Television Stations	+38.8%	7219 Truckmen NOC	+1.8%
9079 Restaurants	+25.6%	7222 Truckmen Oil Field Equipment	+1.8%
5551 Roofing All Kinds	+46.0%	5445 Wallboard Installation in Bldgs	+41.6%
8742 Salesmen, Outside Messengers	+1.1%	7520 Water Works Operation	+4.0%
4000 Sand or Gravel Digging	-7.9%	3365 Welding or Cutting NOC	+17.7%
2104 Seafood Processors	-12.0%	9063 YMCA, YWCA	+9.4%
6306 Sewer Construction	+14.4%		
7580 Sewerage Disposal Plants Oper	+3.0%		
5538 Sheet Metal Work Erection NOC	+46.0%		
8293 Storage Warehouses, Furniture	+19.1%		

ATTACHMENT #2

"RATEMAKING...THE PRICING OF WORKERS' COMPENSATION INSURANCE"

Booklet published by the National Council on Compensation Insurance.

Copyright 1981.

12 pages.

National
Council on
Compensation
Insurance

Ratemaking:
The Pricing of
Workers' Compensation
Insurance



Preface

The objective of this booklet is to give a description of how workers' compensation insurance rates are determined. The ratemaking process—the pricing of workers' compensation coverage—is a technical function and, as such, has traditionally been the domain of specialized technicians called actuaries. Unfortunately, this has too often resulted in rate determination being regarded as mysterious, even within the insurance community itself. While ratemaking is complex, it is not mysterious. Rates are mathematically-based, producing an objective pricing system which is demonstrably sound and fair. As such, removing any mystique can play an important role in alleviating confusion and skepticism, thus improving the conception of workers' compensation insurance.

The material contained herein is not intended to popularize actuarial science. It reveals no profound secrets nor will it magically transform its readers into actuaries. The goal is simply to make the basic ideas utilized in pricing workers' compensation coverage more familiar and understandable. Towards that end, the emphasis is placed on concepts rather than on mathematical formulas. Once the basic ideas are understood, the merits of the methodology speak for themselves.

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Ratemaking... The Pricing of Workers' Compensation Insurance

What Is Workers' Compensation?

With the advent of the Industrial Revolution came a growing realization that the price for increased overall living comfort was being paid, in part, by the suffering of workers. Not only did the workplace become more distinctly removed from the home, but factories and mass employment introduced into the work environment a myriad of unforeseen dangers. In the late nineteenth century, courts began to make employers responsible for such injuries, giving rise to the need for employers' liability insurance. Because the worker had to sue to recover, and legal defenses were available to employers, the need was recognized for laws to protect workers as a result of injuries incurred in the course of their jobs. Beginning in 1911 with Wisconsin, other states rapidly adopted workmen's (now workers') compensation laws which automatically assured the injured worker partial indemnification without the need to prove fault. On-the-job injuries were recognized as part of the cost of producing goods and services, and workers' compensation insurance fairly allocates this cost to employers.

What Is Workers' Compensation Coverage?

1. Compensates for loss from work-related injury
2. Benefits are specified by state laws
3. Coverage is mandated by law

Today, all states have workers' compensation laws providing for complete medical expenses and a weekly indemnity (loss of earnings) benefit for the injured worker. The coverage now extends to almost all types of employment, to employers with one or more workers, and includes coverage for both injury and occupational disease. By law, employers must provide the benefits to their workers, and in most cases, this is done through the purchase of a workers' compensation policy under which the insurance carrier assumes the complete liability of the employer.

Who Benefits?

Although, from an historical perspective, the introduction of workers' compensation benefits is a landmark in the social and economic progress of laborers, it is incorrect to regard this benefit system as being "one sided." This program is designed to protect the interests of both the worker and the employer. On the one hand, it assures that payment is made to injured workers without regard to who or what may have been at fault in causing the injury. On the other hand, in exchange for the security of guaranteed compensation, the worker relinquishes his right to file a damage suit against his employer in return for the benefits provided for in the statute. In making workers' compensation benefits the exclusive remedy, employers are provided a protection without which even sizable corporations would find doing business hazardous, and the owners of small businesses could be subjected to potential personal financial ruin from a single claim. The employer benefits by the substitution of a relatively small, known expense (premium) for the cost of the large, unbudgeted accident.

Finally, because the relative price charged is based upon the nature of the employer's business, each industry pays in relation to the likelihood of injury. This provides an incentive for work safety and accident prevention, with society, in general, enjoying a safer work environment.

Who Pays?

The burden of funding the benefit system is placed on the business community through the insurance mechanism which charges employers an annual premium for this coverage. This appears fair, since employers are, in large part, responsible for the safety of their workers in plants and offices. One important consequence from this perspective is that this burden of premium enables the pricing methodology to introduce the element of accountability, thereby promoting job safety in an effort to reduce job-related injuries. A firm's payroll is an excellent measure of the occurrence of job-related injury.* Accordingly, an employer's annual payroll, in \$100 units, is multiplied by a price or "manual rate" to determine his annual premium contribution to fund the benefit system. Where appropriate, the premium is adjusted or modified to reflect the occurrence of injuries in the applicable work activity and the individual employer's safety record.

What Does The Price Cover?

Generally speaking, the price of any product must be sufficient to cover the cost of producing the item and the cost of delivering the product to the marketplace. Workers' compensation insurance is no different in this respect. The product to be delivered is dollars. It is dollars in the form of weekly benefits paid directly to the injured worker, and dollars in the form of payment to doctors, hospitals, and others for medical and rehabilitative services provided to the injured worker. These dollars represent the product costs to the insurance carrier.

Insurance, like any other enterprise, has certain costs of doing business. These costs are necessary to operate the benefit system. They encompass items such as expenses incurred in obtaining business, including commissions to producers; the

Business Overhead = Expense Allowance

1. Acquisition
2. General
3. Premium Taxes
4. Claims Adjustment
5. Contingency and Profit

overhead or operating costs of an insurance company (e.g., rent, lighting, salaries, etc.); taxes (other than income); expenses incurred in the settlement of claims; and a provision for profit and contingencies.

Therefore, the rates for workers' compensation coverage must:

1. Provide sufficient funds for benefits, and
2. Provide sufficient funds to operate the system which will deliver these benefits.

A key question, therefore, becomes: What constitutes "sufficient" funds? To answer this, one must understand the nature of the funding mechanism itself.

Workers' Compensation— A Pre-Funded System

The workers' compensation benefit system is pre-funded. This means that the premiums from policies written during a given year are intended to meet all future claim payments made under these policies. This is in direct contrast to programs such as Social Security which use a "pay-as-you-go" funding mechanism. Pre-funding is designed to provide the maximum security to workers so that benefits never will be prematurely terminated or reduced.

The notion of pre-funding and its implications on costs are difficult to convey to policyholders and to the public. The price paid for typical store produce reflects production and delivery costs at the time of purchase: It would be ludicrous for a grocer to demand an additional 10¢ per pound today for bananas sold last year. When dealing with a product such as workers' compensation insurance, it is difficult for the consumer-policyholder to appreciate that the current cost for coverage must suffice to pay all that year's claims, regardless of how far into the future benefit payments on these claims continue.

If the rates charged in the past were inadequate, as has been true, unfortunately, in recent years, there can be no going back to policyholders to recoup the shortfall. Nor can that loss be passed along to the next "generation" of policyholders. If it is lost, it is lost forever. By the same token, if there is more than enough premium, profits are not returned.

*A complete discussion of the use of payroll as the basis of premium can be found in a booklet, "The Basis of Premium For Workers' Compensation Insurance," published by the NCCI.

Risk Vs. Reward

Since there is no guarantee that premium collected will suffice to meet benefit claims and operating costs with no opportunity for recoupment, it follows that a very real risk is involved in the writing of workers' compensation insurance. Insurance is a business and, certainly, no business enterprise will knowingly assume a risk without an incentive to do so. Accordingly, it is necessary that the price for coverage provide such incentive. The price or rate envisions, as mentioned above, a profit and contingency provision (2.5% of premium) which is designed to provide a buffer to financial loss in the event of inadequate rates. The profit and contingency provision incorporated in the pricing of this line of insurance is very low and in and of itself does not present a reward nearly commensurate with the risk assumed. Use of this provision recognizes the fact that, consistent with the pre-funded nature of the system, premiums are paid "up front" while benefit payments are made over a period of years, thereby giving the carrier an interest-earning opportunity. It is this investment earning potential which provides the true incentive for writing this insurance and provides the reward for assuming the risk.

What Is Meant By The Phrase, "Premium Level"?

After describing how the benefits and expense costs are to be funded, the next question which arises is: Does the current price charged in the state under review provide sufficient funds to cover future benefits and expenses? As was mentioned, the book price, or manual rate, is the cost of workers' compensation insurance per \$100 of payroll. Actually, a single price for a state does not exist but, rather, there is a specific price or rate for each of approximately 600 work classifications, with each class representing a specific type of activity.

For a given insured, multiplying his payroll by the current rate for his classification will produce a premium figure. The accumulation of premium for all insureds produces a total statewide premium at the current rate level. This premium figure is referred to as the state "level of premium" or "premium level."

The question which the ratemaker must address, therefore, becomes: Does the current premium level provide sufficient funds for future benefits and expenses?

The Ratemaker's Dilemma

In addressing this question, it is important to realize that when pricing in the context of a pre-funded system, one must project benefit and expense costs in advance.

Consider the following example, keeping in mind that it is customary to set rates to be applicable for one year into the future. In April of 1982, a ratemaker may be asked to update rates for use in 1983. Well before the beginning of 1983, the ratemaker is required to address the question of what is the proper premium level for 1983. This answer must be based upon a knowledge of the number of dollars which will be needed to pay benefits and expense costs for policies issued during 1983. When will the total amount needed be known? Certainly, all claims incurred under 1983 policies must be closed before the *exact* amount can be determined. When, then, will all such claims be closed? Due to the nature of workers' compensation insurance, some claims may not be closed for many, many years.* The ratemaker faces a difficult problem. He must decide in 1982 how many dollars will be needed for claims covered by policies written in 1983, despite the fact that the actual value of some of these claims will not be known for a number of years.

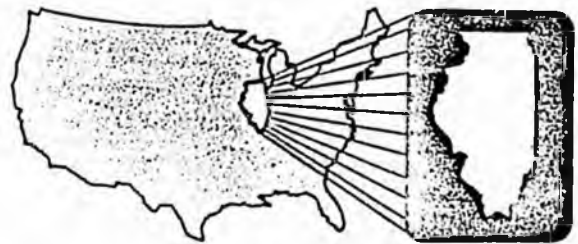
Obviously, he cannot wait to know precisely how many dollars will be necessary for 1983 claims. The ratemaker must, during 1982, estimate the value of these claims. In doing so, he makes it possible to decide upon the proper premium level for 1983.

It is fundamental that in order to make such an estimate, data from the most recent past must be used as the best indicator of what is expected for the period during which the rates will be in effect.

What Data Are Available?

To begin the ratemaking process, data from the recent past must be collected. The National Council on Compensation Insurance (NCCI) is the licensed statistical agent for workers' compensation in most states. The NCCI collects data periodically from its member insurance companies. For each individual state, the data submitted take two forms: Financial Data and Unit Statistical Plan Data.

Types of New Data



1. Statewide Financial Data—to determine what state average price level change is needed.

2. "Unit Plan" or Policy-by-Policy Data—to determine how the average price change should be distributed.

*Workers' compensation coverage, in some instances, provides lifetime benefits for individuals permanently and totally incapacitated as a result of an industrial accident.

A state's financial data are used to determine the required overall change in the statewide premium level. This type of information is sent to the NCCI in response to periodic data requests. Similar information of a financial nature is sent to the State Insurance Departments as part of the Annual Statement and Insurance Expense Exhibit. These are sworn company documents, which must be filed annually, according to regulation. Financial reports include the carrier's overall premium and benefit cost experience, reported separately for each state.

On the other hand, the Unit Statistical Plan (USP) figures are detailed policy information. In fact, a USP report is required for each policy written. It includes individual employer payrolls, premiums, and details of all compensation claims. The information obtained from the USP plays no part in determining whether the overall level of premium in the state is too high or too low. Rather, once the financial data have been utilized to make this determination, the highly-detailed USP data are used to apportion the average price change among the various work classifications. The data are also used in adjusting the price of coverage for larger, qualifying employers by means of a mandatory experience rating program.

Data Validation

Data are the lifeblood of any ratemaking process. NCCI, therefore, expends a considerable amount of effort making certain that the data it uses are accurate. The checks involved in validation must be completed before any conclusions are drawn from the data.

While the details of the validation routines are beyond the scope of this booklet, it may be interesting to simply describe the dimensions of the validation effort. The NCCI is licensed in 32 jurisdictions, and has approximately 600 member companies writing approximately 1,300,000 policies annually. Since each member is required to submit many reports for each state in which it does business, it is easy to see that the number of reports which must be reviewed is enormous. The NCCI employs approximately 100 individuals to review data submissions for quality.

While computers must be used to assist in this review and validation, every step is under the watchful eye of trained technicians and actuaries, who check the data to certify its validity. Anomalies are questioned and returned to the carriers for correction, if necessary.

Financial Data

Returning to the need for determining whether the current premium level is proper, recall that it is the financial data which are relied upon to evaluate the propriety of the current premium level. It must be emphasized that when a premium level analysis is performed for a state, the only data used are that state's own premium income and claim cost experience. There are several types of financial data, including policy year, calendar year, and calendar/accident year.

Policy Year Data

As can be inferred from the name, policy year data are organized according to the date upon which the policy becomes effective. For example, policy year 1980 refers to premium and benefit claim costs from all policies whose coverage began during 1980. Depicted below are the terms for several such policies, each providing standard, one-year coverage. The distinguishing characteristic is simply that the date when coverage begins falls in 1980.

Policy Year 1980

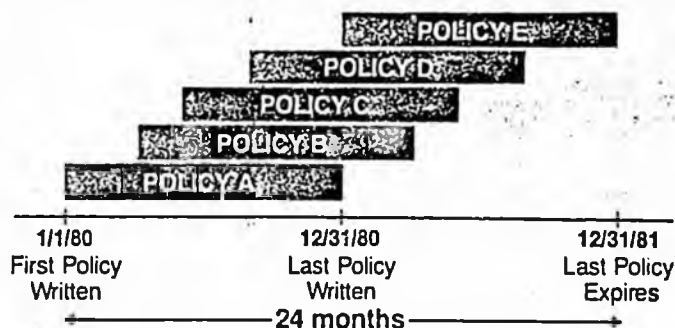
Sampling of policies from Policy Year 1980

Policy	Coverage Begins	Coverage Ends
A (first)	1/1/80	1/1/81
B	3/7/80	3/7/81
C	5/1/80	5/1/81
D	8/12/80	8/12/81
E (last)	12/31/80	12/31/81

This coverage can be represented in a more pictorial way.

Policy Year 1980

Time span for Policy Year 1980 experience



Policy year 1980 illustrates that experience in a single policy year actually takes place over a 24-month time span, and that the final policy included in policy year 1980 does not terminate until the end of 1981. It follows that for a ratemaker performing an update during 1982, 1980 is the latest policy year available.

Policy year data are analogous to considering the income and outgo of funds on items manufactured during a single fixed year, regardless of when the items are sold. Policy year 1980, therefore, encompasses the input from all premiums and the outgo from all benefits resulting from policies becoming effective during 1980.

Calendar Year Data

Calendar year data reflect another way of organizing information. It is done by organizing financial transactions according to the date on which they took place. Calendar year experience most nearly resembles the data one is accustomed to seeing in the financial reports of all types of businesses, whether or not they are related to insurance. Calendar year 1981 refers to premium and benefit claim costs from all financial transactions which occurred during 1981. Calendar year 1981 is available at year's end and is the most current information available during early 1982.

Calendar Year 1981

Time span for Calendar Year 1981 experience



1/1/81
First
Transaction
Occurs

12/31/81
Last
Transaction
Occurs

For a business enterprise, calendar year data are analogous to considering the income and outgo of funds which occurred during a fixed year, regardless of when the items sold were manufactured. Actuaries are interested in calendar year results because they provide a meaningful report on the company's economic gains or losses for the year in much the same way as would an annual income statement prepared by an accountant.

Calendar/Accident Year Data

Calendar/accident year refers to a third way of organizing financial data. The term "calendar" pertains to premiums being organized according to transaction date. The term "accident" pertains to benefit claim costs being organized according to the date on which the accident took place. For example, calendar/accident year 1981 refers, on the premium side, to 1981 calendar year premium, while the benefit claim costs would encompass claims from all accidents occurring during 1981.

Calendar/accident year data are not currently utilized in the pricing of workers' compensation insurance. Investigation is now underway to determine how this data might best be utilized. Currently, the financial data used in the overall premium level determination are policy year and calendar year.

Since policy year data match premiums and benefits from an identified collection of policies, it provides a very stable and natural base upon which to structure a premium level analysis. As is evident from the preceding narrative, however, the experience from a policy year spans a 24-month period. Calendar year data, on the other hand, encompass all transactions of the past year and, therefore, become available as of year's end. The use of calendar year data, therefore, enables the ratemaker to incorporate more recent information into the premium level analysis and thereby increases responsiveness of the pricing mechanism.

Adjustments To Data

1980 policy year data and 1981 calendar year data have been described. These are historical accountings. They can reveal whether or not a proper rate level was used for a particular period in the past and, if not, what the rate level should have been. These data, however, *cannot* reveal what the proper rate level should be for a *future* period unless certain adjustments are made.

Adjustments to Policy Year Data

Premium:

1. Effect of recent price changes
2. Additional premium development (e.g., from late audits)

Benefit Costs:

1. Recent statutory benefit changes
2. Additional benefit cost development

Taking policy year 1980, for example, the premium must be adjusted for two conditions. First, premium must be adjusted for the effect of any rate changes in the state under review, which have already taken place on or after January 1, 1980, the date when the first policy from policy year 1980 went into effect. The purpose of this adjustment is to determine what the premiums would have been if all the premiums had been earned under the latest approved prices which are, after all, the ones under analysis and the ones which are being updated. Actuaries call this "adjusting premium to current rate level."

The second adjustment is made to reflect what is called premium development. As mentioned earlier, the first step in determining how much premium an employer pays is to multiply the manual rate, or price, times the payroll in units of \$100. Of course, the final payroll earned under the policy often is not known until after the policy expires and is audited. The difference between the estimated premium and the premium based upon final audit is the major contributor to premium development. By tracking the premium movement in a state for earlier policy years, an estimate can be made of how much the preliminary report of the most recent policy year's premium will change when the final results are known.

Likewise, policy year 1980's benefit claim costs must also be adjusted in two ways. First, they must be adjusted to reflect the cost impact of statutory benefit changes which have become law subsequent to the start of the policy year. This is called "adjusting benefits to current law level."

Second, benefit costs, like premium, must also be adjusted by a development factor. This is best understood through an explanation of the components of benefit costs.

Policy year 1980's incurred benefit claim costs are the sum of what has been paid to date under claims arising from policies beginning in 1980, plus what the insurers still owe or still have to pay under those policies. The amount insurers still owe to injured workers is often called the "amount outstanding" or the "amount reserved." These terms are used interchangeably. Therefore, the incurred benefit costs can be expressed in any of the following three ways:

Incurred Benefit Costs = Amount Paid + Amount Still Owed
 Incurred Benefit Costs = Amount Paid + Amount Outstanding
 Incurred Benefit Costs = Amount Paid + Amount Reserved

Thus, loss reserves in the insurance business are analogous to accounts payable in other types of business. Of course, when the reserve is for lifetime weekly benefits or for future medical expenses, it is obvious that there must be some uncertainty regarding precisely how much money ultimately will be paid on any particular claim. Companies, using accepted actuarial principles, make their best estimate of how much should be set aside for future payments on cases which are still open. Of course, once every claim has been closed, then all of the incurred benefit costs are paid, and the outstanding costs, or reserves, for the policy year are zero. By tracking the difference between the first estimates of incurred benefit costs and final benefit costs for older policy years in a state, a "development factor" can be determined. This development factor adjusts benefit costs from those initially reported to their ultimate value according to the most recent pattern of how benefit costs have matured over time. This factor is applied to the latest policy year's incurred costs.

It should be emphasized that this illustration uses data which have already been actuarially adjusted—the premium expected to be collected is based upon the *current* rate level, and the benefits expected to be incurred are based upon the *current* benefit level.

As illustrated below, the premium expected to be collected at the current rate level is larger than the costs expected to be incurred under current benefit provisions. In this example, since the current price of workers' compensation insurance generates funds more than sufficient to provide for benefits and expenses, the conclusion is that the current price is too high—a rate decrease is warranted. (A)

Adjustments in Calendar Year Data

Premium:
Effect of recent price changes

Benefit Costs:
Recent statutory benefit changes

Calendar year premiums and benefit costs are also adjusted to reflect the latest rate level and benefit level, respectively. Unlike policy year data, calendar year data, by definition, reflect a specific collection of closed financial transactions and, therefore, do not require the adjustment known as "development."

Having obtained both premium and benefit costs which reflect the current conditions, a test is performed to see how well the current prices are functioning and to determine, on an overall basis, what changes, if any, are needed.

The Test For Premium Level Adequacy

Now, two approaches to testing the current rate level for adequacy are presented. The first conceptually shows the intent in performing this test. The second is quantitative and works through a derivation of the necessary change in premium level.

Conceptual Approach

Conceptually, the test of adequacy may be viewed as placing income and outgo on a scale to see if the two are "in balance." This may be expressed in the illustration below, which depicts the process which yields the desired situation in which a proper rate level has been achieved.

Test for Premium Level Adequacy

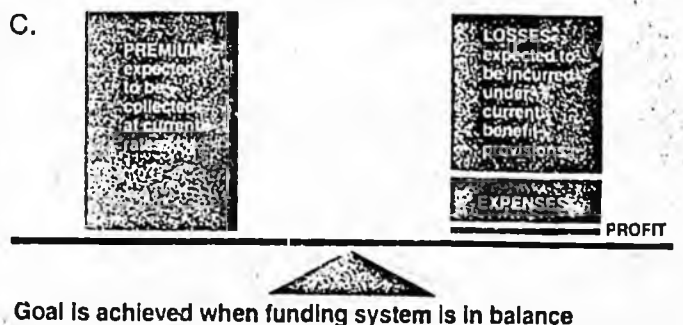


Current rates too high—Premium level decrease is indicated Or, ... the picture may look like:



Current rates too low—Premium level increase is indicated

An overall proposed Premium level change is determined so as to produce the following picture:



On the other hand, the premium level analysis may produce a picture illustrated above which displays a situation calling for a rate increase—the premium expected to be collected at the current rate level is insufficient to fund the benefit system. (B)

In each situation, the price is not proper. A price is sought which will provide just enough premium dollars to finance the benefits and the expenses. Therefore, each situation leads to a required change in the price to achieve the balanced picture depicted above. (C)

Quantitative Approach

Now that the objective has been conceptually visualized, a hypothesized situation will be used to quantitatively determine a rate level change.

The first step in this calculation is the computation of a policy year and a calendar year "loss ratio." A "loss ratio" or "cost ratio" is simply the adjusted benefits divided by the adjusted premium and represents that portion, or percentage, of the premium dollar which is needed to finance benefit costs.

Policy Year Cost Ratio

After the actuarial adjustments referred to earlier have been applied to policy year 1980 premium and benefit figures, the policy year cost ratio is computed. For simplicity, refer to the following hypothetical example.

Assume: Policy Year 1980's Adjusted Benefits = \$82,000,000
 Policy Year 1980's Adjusted Premiums = \$100,000,000
 Then: Policy Year 1980's Cost Ratio = .82 or 82%
 (\$82,000,000/\$100,000,000)

This 82% cost ratio can be interpreted in the following manner: Based upon policy year 1980's experience, actuarially adjusted to be reflective of current conditions, \$82 of benefits can be expected to be incurred for each \$100 of premium.

Calendar Year Cost Ratio

As with policy year data, calendar year experience is actuarially adjusted to current conditions. A comparison of adjusted benefits to premiums will then produce a cost ratio for calendar year 1981. For example:

Assume: Calendar Year 1981's Adjusted Benefits = \$80,000,000
 Calendar Year 1981's Adjusted Premiums = \$100,000,000
 Then: Calendar Year 1981's Cost Ratio = .80 or 80%
 (\$80,000,000/\$100,000,000)

This hypothetical cost ratio can be interpreted in the following way: Based upon calendar year 1981's data, actuarially adjusted to be reflective of current conditions, \$80 of benefits can be expected to be incurred for each \$100 of premium.

The Average Cost Ratio

Two estimates of how the current premium level compares with current benefit costs have been produced; one based upon 1980 policy year experience, and the other upon 1981 calendar year experience. The ratemaking procedure calls for a blending of these estimates. This is accomplished through an arithmetic average of the policy year and calendar year cost ratios.

- 1) Policy Year Cost Ratio .82
- 2) Calendar Year Cost Ratio .80
- 3) Average Cost Ratio .81

This value of .81 or 81%, means that, based upon experience, \$81 of benefits can be expected to be incurred for each \$100 of premium.

Target Cost Ratio

In order to evaluate the significance of the average cost ratio, a standard against which it can be measured is required. This standard is referred to as the target, balance point, or permissible cost ratio. It is the portion of each premium dollar available to finance benefits.

Balance Point Ratio



= the portion of each premium dollar available to finance benefits

As mentioned earlier, there are certain expenses which must be met in order to deliver workers' compensation benefits. If it is assumed that these costs account for 20% of each premium dollar, then it follows that 80% of each premium dollar will be available for financing the benefits themselves. Eighty percent then becomes the balance point or target cost ratio in the hypothetical example.

Necessary Rate Level

In general terms, the next step in the ratemaking process is to compare the average cost ratio with the target cost ratio. If the average cost ratio is greater than the target cost ratio, an increase is indicated, while if the average cost ratio is less than the target cost ratio, a decrease is indicated.

$$.81 \div .80 = 1.013$$

Average Cost Ratio \div Balance Point Ratio = Change in Premium level based on past experience

Thus, in the example, 81¢ out of the premium dollar is currently needed for compensation benefits, but only 80¢ is now available. This means that the current price is not sufficient to fund the system. Indeed, by dividing the 81¢ needed by the 80¢ available, a factor of 1.013 is determined which is the necessary adjustment to bring the premium level up to current needs: in this example, a 1.3% increase. Had the cost ratio shown a current need of less than the 80¢ balance point, then a premium level decrease would have been indicated.

This estimate of the required adjustment is predicated upon the current rate level and the current statutory benefit provisions and is based upon historical data from policy year 1980 and calendar year 1981.

Trend Factors

Since the objective is to produce rates to be used during 1983, it is important to consider whether the price level need for this future time will differ from the present. When the information available enables a projection of price level need, the ratemaking methodology incorporates this through the application of a "trend factor." One consideration which may cause future price level needs to change is *future* growth in payrolls. Other considerations such as changes in the frequency or severity of claims due to benefit utilization, inflation, etc. are also relevant. All of these considerations are incorporated to determine the trend factor.

Trend Factor

Reflects:

Premium

- Changes in payrolls

Benefit Cost

- Changes in duration of claims
- Changes in the frequency of claims
- Inflation rate

The trend factor is based upon a *comparison* of movements in benefit costs with movements in payrolls. Suppose, for example, that an examination of data shows that payrolls are, indeed, increasing. Since premium is based upon payroll, even by maintaining the current rates, a greater amount of premium will be generated in 1983 than was previously available.

On the other hand, suppose the review also shows that benefit costs are rising as well. Higher costs for 1983 than was the case for either 1980 or 1981 are also anticipated. The trend factor accounts for these *anticipated* movements in payrolls and benefit costs and enables the premium level need for 1983 to be estimated more accurately. Should the trend analysis reveal that benefit costs are growing faster than payrolls, then the 1.3% increase, based on historical data adjusted to current conditions, would be inadequate, and a greater increase is indicated. On the other hand, if payrolls are growing faster than benefit costs, then the 1.3% increase overstates the premium need and is lowered accordingly.

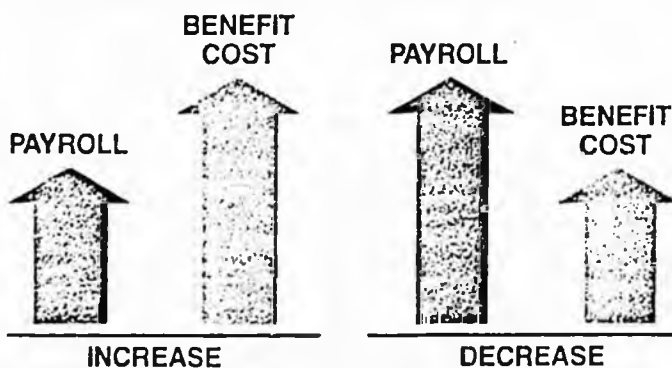
It should be understood that even in states in which application of a trend factor is not practicable, payroll growth is still reflected in the determination of rates. This is so because the most current premium figures are used which, in turn, reflect current payrolls.

To summarize, an overall adjustment has been determined which, when applied to the current rates, will produce a new set of rates. These updated rates will, when applied to 1983 payrolls, generate the premium required to pay 1983 claims. This represents the overall updating of rates based upon newly available data.

Updating For Changes In Statutory Benefits

To this point, it has been assumed that 1983 claims will be compensated according to the current statutory benefit provisions. There is, however, a further source of information available to the ratemaker. Suppose, as is often the case, that the ratemaker is aware of a future adjustment to statutory provisions. Pursuing the hypothetical example one final step further, assume that a change in the benefit provisions will occur on January 1, 1983. Since rates for application during 1983 are being produced, it is appropriate that this benefit revision be accounted for in the proposed rates. To achieve this, a cost evaluation of the change is performed for each type of injury—death, permanent total disability, permanent partial disability, temporary disability, and medical. Based upon how the various injury types are distributed, a combined impact of the benefit change on benefit cost is determined. If the new benefits result in increased cost, the indicated premium level adjustment is increased accordingly and, if the new benefits produce a decrease in cost, the indicated premium level adjustment is lowered.

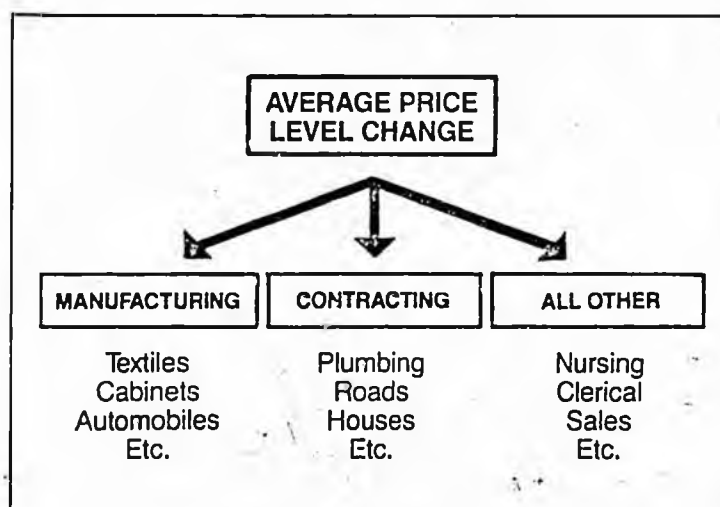
Trend Factor



Distribution Of Overall Rate Level Change To Individual Classifications

The fact that the overall level of premium in a state may need to be changed does not mean that the rates for each and every classification should be adjusted by the same amount. The overall indicated change is simply the average change which is necessary to generate the proper premium for the entire state. As mentioned before, there are about 600 work activity classifications. How, then, should the average change be distributed to these classifications? The process is accomplished in two steps. The first step is to calculate the needed change by "Industry Group."

Each classification is assigned to one of three broad categories based upon the work activity which that classification describes. These categories include manufacturing, contracting, and all other classifications. These three divisions are referred to as "Industry Groups."



If, for instance, the premium and benefit experience of the Manufacturing Industry Group was better than the overall experience, then that group's change will be less than the statewide change (less of an increase or more of a decrease). However, if an industry group had experience which was worse than the statewide experience, then its average change would be higher. It is possible that even when rates are increased overall, a particular industry can, on average, experience a decrease in rates.

It should be emphasized that the adjustment computed for an industry group is still an average; it represents the average change that job classifications in that group will receive.

The second step is to distribute the average industry group changes to the individual classifications such as machinists, bakers, plumbers, or nurses. The purpose of this classification system is to group employers so that the manual rate reflects the average exposure common to the business described. It is the business of the employer within a state that is classified, not the separate employers, occupations, or operations within the business. Since the classification's rate represents the average behavior of all members of that class, it is a fair and equitable way of distributing the cost of insurance.

How useful the latest experience in a particular classification can be for determining the rate in that class depends upon the volume of experience which has occurred in the class. If, for instance, within a particular class, the premium collected over the past three years totals \$3,000, while a claim occurred costing \$30,000, it is not proper to conclude that the price for that class should be increased ten-fold, based solely upon that experience. This is because the data available are not statistically significant. However, the greater the volume of data that is available, the greater the reliability for predicting future occurrences—and for setting prices. Actuaries call this "statistical significance" or "credibility."

If the operations placed under a particular classification have reported doing a large volume of business, the recent experience for the classification is regarded as fully credible, that is, it constitutes, in and of itself, the best means for future projection. If the volume of business is small, then the recent experience may have little or no credibility—the data are too limited from which to draw any conclusions. For in-between volumes of data, actuaries assign partial credibility values. If the latest three years of data for a class generate full credibility, no other information is necessary for determining that classification's rate change. But, as is the usual case, when only a lesser volume of data is available, this information must be supplemented by two other sources. The first source comes from the currently applicable rate, and the second source comes from the experience for that classification on a nationwide basis, properly adjusted to the conditions of the state being reviewed. It is worth noting that before the proposed schedule of prices by classification is released, a detailed test is made to insure that precisely the average price level change previously determined for each industry group is, in fact, achieved.

The "Manual Premium"— A Starting Point

What has been discussed so far is the updating of manual rates which are applied to payrolls to produce "manual premium." But, for the major share of the premium income earned, the manual rate is only the starting point for determining what an individual employer will pay for his workers' compensation coverage. The final premium cost to the insured depends on the operation of other programs, some mandatory and some optional.



Manual rate is starting point for determining cost of Workers' Compensation Insurance

Additional Factors:

1. Prospective experience rating
2. Premium discounts
3. Optional retrospective rating
4. Dividends to policyholders

Experience Rating Plan

For example, the classification system subdivides insureds according to product, process, operation, type and character of business, etc. But the insureds who populate these classes can differ in a variety of ways: how the operation is performed, the manner in which the product is manufactured, and the implementation and operation of safety programs, to name a few. These factors will all affect the propensity for an injury to occur. In order to reflect these differences and to encourage the safe operation of a workplace, an "Experience Rating Plan" is applied.

Experience Rating

1. Only applicable to insureds over eligibility point
2. Adjusts manual rate by comparison of employer's actual past experience to average of "expected" experience
3. Impact is proportional to the size of the insured

Experience rating is a mandatory program applied only to insureds who are large enough for the individual insured's own past experience to be an indicator of how the benefit cost for this insured will differ from the average in the future. For the smallest sized employers, no statistical significance can be assigned to their past history. Thus, they are charged the manual rate.

An insured with perhaps one-half million dollars of premium per year is of sufficient size that the costs he has generated in the past are a very reliable indicator of the cost he can be expected to generate in the future. For smaller employers, their own experience is a good partial indicator and, thus, is assigned a partial weight. Experience rating is a comparison of the employer's own past actual experience to the expected or average experience, generated by similar types of business.*

Premium Discounts

After the experience rating modification has been applied, the next step in determining the cost of a policy is to apply a program of mandatory premium discounts.* Premium discounts are needed because manual rates are equivalent to a manufacturer's list price applicable to goods being sold in small quantities. Just as the manufacturer reduces his unit price when larger quantities of the product are purchased, so, too, does the insurance company lower its prices when the employer has a large base premium.

The premium discount program is mandatory and requires that a discount be applied to any annual premium in excess of \$5,000. Premium discounts are appropriate to apply to the policy premium because there are certain costs to the insurance carrier which do not vary directly with the size of the policy.

Premium Discounts



1. Give insureds credit for economies of scale in the area of overhead (expenses)
2. Application of premium discount program is mandatory

The combination of the mandatory rates, experience rating, and premium discounts represents a guaranteed cost to the employer. If the employer believes it is to be to his advantage, he may seek a "retrospective rating" agreement which can alter his guaranteed cost.

*A discussion of the experience rating plan, together with a concrete description of how the plan impacts on the policy premium, is the topic of a booklet entitled, "The ABC's of Experience Rating," published by the NCCI.

*There are jurisdictions (e.g., Indiana) in which premium discounts are a marketing option to the insurer offering coverage. There are also jurisdictions (e.g., Indiana) in which no premium discounts may be applied to coverage under an assigned risk program.

Retrospective Rating

Retrospective rating is an optional program which only applies when the employer selects it and the insurer agrees to it. It is a program where, in essence, the employer agrees, prior to the start of the policy, to pay for his own benefit cost, plus a basic charge which largely is to cover the costs of the insurer-provided services.

An employer may choose such a "cost plus" arrangement with limits. For instance, there may be a maximum and/or minimum premium chargeable regardless of how high or how low the actual benefit costs turn out to be. The specific minimum and maximum amounts for a particular employer are agreed upon prior to the start of the policy. The rating organizations, on instruction from the National Association of Insurance Commissioners, check that each individual retrospective rating agreement is within the established bounds for actuarial fairness and propriety, as filed with the regulators.

Retrospective Rating

1. Completely optional
2. "Cost Plus"
3. Employer pays own benefit costs plus a basic charge for services
4. Cost to employer has pre-selected minimum and maximum premium
5. Actuarial propriety of each agreement checked by rating bureau

What has been described are the components of a total pricing program to be determined before coverage is initiated. It is worthwhile mentioning that some insurance companies, as a matter of their own corporate policy, make reductions to the net cost after the policy has expired. They do this through what is called a "dividend" to policyholders. Each company may have its own formula for determining dividends to be paid.

Dividends to policyholders are not, however, a part of the NCCI's pricing program, but can be a reduction in the final cost to employers.

Summary

A great deal of information has been presented, from the analysis of historical data and benefit changes to update the overall premium level, to the distribution of the overall adjustment among the numerous job activity classifications. Additionally, rating plans and the role they play in the pricing of coverage have also been reviewed.

The NCCI realizes that there is a growing awareness and heightened interest in how the price for workers' compensation insurance is determined. NCCI welcomes this interest and has, in response, provided this booklet. The pricing of workers' compensation insurance is a wide-ranging and complicated topic and, necessarily, technical matters have been presented here in a distilled and simplified form. A pamphlet geared toward individuals already familiar with the basics of ratemaking, who seek an in-depth understanding of the methodology, is now in preparation. The goal, here, has been to illustrate the fundamental principles involved, to remove some of the mystique, and thereby, to provide a better appreciation of the workers' compensation insurance product.

NCCI Locations

NCCI National Office, New York City

**NCCI Rating Division and
Data Processing Center, New Jersey**

NCCI Midwest Regional Office

1999 Wabash Avenue, Suite 205,
P.O. Box 1238, Springfield, Illinois 62705—Monitors
NCCI Offices Servicing Illinois, Indiana, Iowa, Kansas,
Missouri, Nebraska, Oklahoma and South Dakota

Illinois Council on Compensation Insurance

P.O. Box 1666, 1999 Wabash Avenue,
Springfield, Illinois 62705—Services Illinois

Indiana Compensation Rating Bureau, 5920 Castleway
West Drive, Suite 121, P.O. Box 50940, Indianapolis, Indiana
46250—Services Indiana

Kansas Council on Compensation Insurance, P.O. Box
1577, 3601 West 29th Street, Topeka, Kansas 66601—Services
Kansas

Missouri Council on Compensation Insurance, 10825
Watson Road, St. Louis, Missouri 63127—Services Missouri

North Central Council on Compensation Insurance,
4685 Merle Hay Road, OakMoor II, Suite 101, Des Moines,
Iowa 50323—Services Iowa, Nebraska and South Dakota

Oklahoma Council on Compensation Insurance, 3555
N.W. 58th Street, Suite 730, Oklahoma City, Oklahoma,
73112—Services Oklahoma

Coal Mine Council on Compensation Insurance, 10825
Watson Road, St. Louis, Missouri 63127—Services Coal
Mines

NCCI Southern Regional Office, 320 Beacon Parkway, West
Box C-40, Birmingham, Alabama 35283—Monitors NCCI
Offices Servicing Alabama, Arkansas, Florida, Georgia,
Kentucky, Louisiana, Mississippi, South Carolina and
Tennessee

Arkansas Council on Compensation Insurance, 307
Donaghey Building, 7th & Main, Little Rock, Arkansas
72201—Services Arkansas

Florida Council on Compensation Insurance, 7960
Arlington Expressway, 4th Floor, P.O. Box 8899, Jacksonville,
Florida 32239—Services Florida

Louisiana Council on Compensation Insurance, 3501
North Causeway Boulevard, Suite 600, Metairie, Louisiana
70002—Services Louisiana

South Carolina Council on Compensation Insurance,
3710 Landmark Drive, Suite 109, P.O. Box 4383, Columbia,
South Carolina 29240—Services South Carolina

Southeastern Council on Compensation Insurance 320
Beacon Parkway, West, Box C-40, Birmingham, Alabama
35283—Services Alabama, Georgia, Kentucky, Mississippi
and Tennessee

NCCI Western Regional Office, One Tamarac Square, Suite
500, 7555 E. Hampden Avenue, Denver, Colorado 80231—
Monitors NCCI Offices Servicing Alaska, Arizona,
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Utah

Alaska Council on Compensation Insurance, 620 S.W.
5th Avenue, Suite 1110, Portland, Oregon 97204—Services
Alaska

Montana Council on Compensation Insurance, 620 S.W.
5th Avenue, Suite 1110, Portland, Oregon 97204—Services
Montana

Mountain States Council on Compensation Insurance,
One Tamarac Square, Suite 504, 7555 E. Hampden Avenue,
Denver, Colorado 80231—Services Arizona, Colorado,
Idaho, New Mexico and Utah

Oregon Council on Compensation Insurance, 620 S.W.
5th Avenue, Suite 1110, Portland, Oregon 97204—Services
Oregon

NCCI Eastern Regional Office, 998 Old Eagle School Road,
Suite 1210, Wayne, Pennsylvania 19087—Monitors NCCI
Offices Servicing Connecticut, District of Columbia, Maine,
Maryland, New Hampshire, Rhode Island and Vermont

Mid-Atlantic Council on Compensation Insurance, 305
W. Chesapeake Avenue, Baltimore, Maryland 21204—Services
District of Columbia and Maryland

Northeastern Council on Compensation Insurance, P.O.
Box 60, 21 Wintonbury Mall, Bloomfield, Connecticut 06002—
Services Connecticut, Maine, New Hampshire, Rhode
Island and Vermont

Additional Copies May Be Obtained From:
National Council on Compensation Insurance,
Public Affairs Office, One Penn Plaza, New York, New York 10119

ATTACHMENT #3

**"CLASSIFICATION IS FUNDAMENTAL TO WORKERS'
COMPENSATION PRICING"**

Booklet published by the National Council on Compensation Insurance.

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12 pages.

National
Council on
Compensation
Insurance

Classification is
Fundamental to
Workers' Compensation
Pricing



National
Council on
Compensation
Insurance

Classification is
Fundamental to
Workers' Compensation
Pricing

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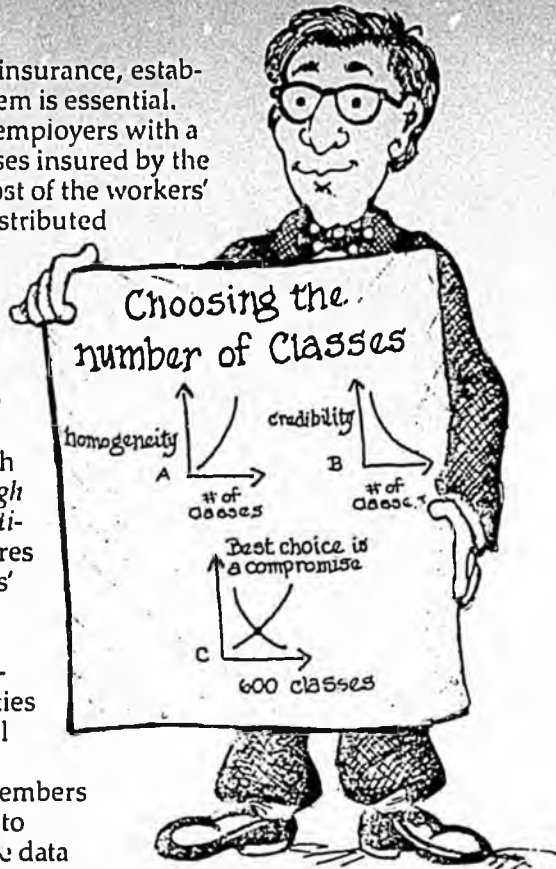
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DEPARTMENT OF COMMERCE
& ECONOMIC DEVELOPMENT
DIVISION OF INSURANCE

Introduction

In workers' compensation insurance, establishing a classification system is essential. Each classification groups employers with a similar exposure to the losses insured by the policy so that the overall cost of the workers' compensation system is distributed fairly among the employers. Each classification is assigned a rate which is commensurate with its potential for loss.

To ensure an equitable distribution of costs, each classification should be both *homogeneous* and *large enough to provide a meaningful statistical base*. This, in turn, ensures the integrity of the workers' compensation data base, essential for the pricing, experience rating, law evaluation, and research activities undertaken by the National Council on Compensation Insurance (NCCI) for its members and subscribers. The need to preserve the integrity of the data base has been acknowledged through legislation in those states which have adopted competitive rating laws.



"...some industries are inherently more dangerous than others."



The need for classifications can be understood best by imagining a situation without them. With no classifications, a single average price would prevail, distributing the premium required to pay benefits equally among all insureds. This obviously would be inequitable because some industries are inherently more dangerous than others. Without classifications, the premium charge for high hazard industries would be insufficient, while premiums for low hazard industries would be excessive. In effect, the low hazard businesses would be subsidizing the high hazard ones. A classification system serves to distribute premium among employers in an equitable manner, consistent with statistically supportable differences in loss expectation among different kinds of businesses.

Once it has been determined that some form of classification system is necessary, the next step is deciding upon the proper number of classifications. Because all businesses are distinct, there is always some variation among them and, theoretically, all employers in a state could be arrayed in a continuous spectrum from the least to the most hazardous. Thus, the maximum possible number of classifications would be equal to the number of employers in the state, with one classification for each employer. However, few of these "classifications" would produce statistically reliable experience.

At the other extreme, as mentioned above, would be the single statewide classification producing one manual rate. Although the single rate would be a statistically reliable indicator of expected losses, it would produce an extremely inequitable distribution of premium.

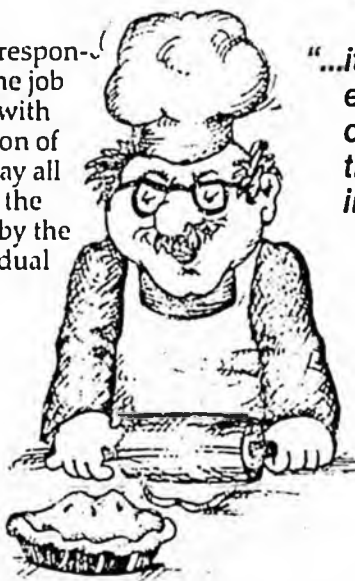
As opposed to these two impractical extremes, workers' compensation insurance uses approximately 600 industrial classifications. This system groups employers involved in the same kind of business. Generally, similar businesses have similar exposures to occupational injury and disease, even though no two businesses are identical.

The experience for each classification is tabulated and serves as the basis for the "manual rate" for that classification. The manual rate is the average price for all employers in the classification. In practice, it tends to produce the premium charge for smaller employers—typically, no more than 15 workers—while for larger employers, the manual premium (i.e., the premium produced by the application of the manual rates to total payroll of the insured) is subject to experience modification based upon the employer's own history of losses. The application of the experience modification can produce a premium higher or lower than the manual premium, depending upon the insured's experience. Other NCCI publications are available upon request explaining the theory and application of experience rating.

The object of the workers' compensation classification system is to group similar employers so that each classification reflects exposures common to them. Subject to certain exceptions to be discussed below, it is the business of the employer (the insured) within a state that is classified, and not the separate employments, occupations, or operations of individual employees within the business. Several reasons for this are:

1. A workers' compensation insurance policy agrees to pay "all compensation and other benefits required of the insured by the workmen's compensation law." Although the injured worker is the beneficiary of the policy, it is the business which is actually insured.

2. Workers' compensation laws hold the employer responsible for compensation benefits to workers injured on the job without any regard to fault. The law places the liability with the employer and the insurance contract, in consideration of payment of premium, obliges the insurance carrier to pay all compensation-related costs established by law. Because the employer's liability is covered, employers are classified by the business undertaken rather than by the duties of individual workers.



"...it is the business of the employer...that is classified, and not the...operations of individual employees..."

3. In addition to being consistent with the principles of workers' compensation insurance, this procedure promotes safety and loss prevention and reduces the expenses of administering the insurance program. By grouping employers in accordance with the nature of the business, each industry has the opportunity to control its own workers' compensation costs through industry-wide safety and loss prevention programs, such as those sponsored by industry trade associations. If such programs produce a lower frequency of accidents, that improved experience will tend to lower manual rates.

If, on the other hand, a classification system were based upon the individual duties of each employee, each classification would cut across industry lines, and a single industry's safety program, even if successful, would have little impact on its premium costs because it would affect only a small proportion of the total number of workers in the various categories and not alter rates significantly. Thus, classification by industry serves to promote loss prevention and on-the-job safety better than classification by individual occupation.

4. Under a system of classification by individual occupation, total losses would not be affected substantially, although there would be a redistribution of premium, with some employers paying more and others paying less. Such a classification system would almost certainly cause the costs of administering the insurance program to rise. Insurance carriers would be required to audit payroll more closely and to verify proper claim assignment. To enable the carriers to perform these more time consuming and costly audits, employers would be required to keep more extensive records. Not only would the additional record keeping be a source of valid complaint from employers, but a classification procedure based on individual employee duties could result in unfair discrimination between those employers maintaining proper records and those unwilling or unable to maintain them. Reviewing and resolving such complaints at all levels, as well as the increased audit, verification, and record keeping expenses for all parties, would produce increased costs for providing workers' compensation insurance protection.

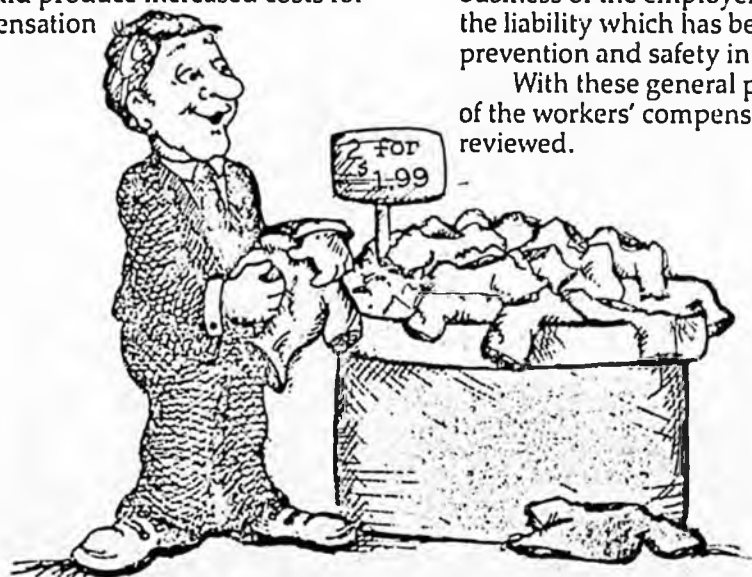


"...similar businesses have similar exposures to occupational injury and disease, even though no two businesses are identical."



In summary, a classification system based upon the business of the employer has the dual advantage of reflecting the liability which has been insured, while encouraging loss prevention and safety in a cost effective manner.

With these general principles in mind, the evolution of the workers' compensation classification system will be reviewed.



Explanation of Classifications

All the classifications, with the exception of the Standard Exception classifications to be explained below, are called basic classifications. Each basic classification is assigned a four-digit code number. Basic classifications describe the business of the employer, such as:

Business	Classification	Code Number
Manufacture of a Product	Furniture Mfg.—Wood NOC*	2883
A Process	Engraving	4352
Construction or Erection	Carpentry NOC	5403
A General Type or Character of Business	Hardware Store	8010
A Service	Beauty Parlor	9586

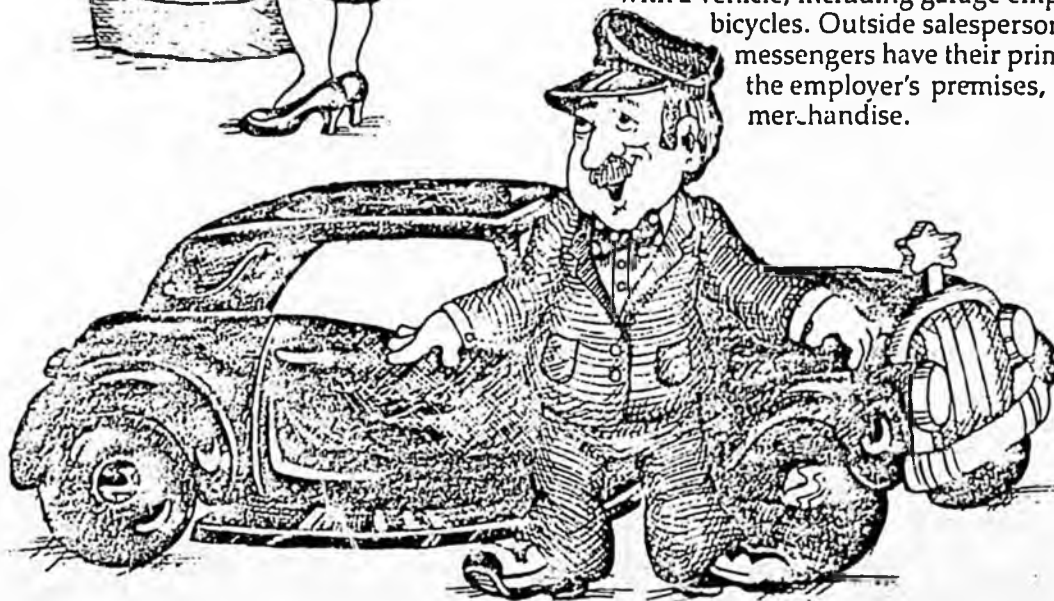
*Not Otherwise Classified.

Classifications are listed alphabetically in the *Basic Manual for Workers' Compensation and Employers' Liability Insurance*. In some instances, explanatory footnotes follow the classification listing and these notes are considered part of that classification. There is also a *Classification Code Book* which lists all classifications in numerical order and arranges all classifications into 32 main industry divisions called schedules, which are subdivided into 133 smaller groups of classifications having similar characteristics. As will be explained below, the Code Book can be very helpful in determining a classification assignment because it groups industries with similar operational characteristics. In the numerical listing, all active classifications will be found, including classifications which apply in each state using the Basic Manual, "state specials" (classifications applicable in only one or a few states), and discontinued classifications, incorporating, in many instances, an indication of the classification to which the experience of the discontinued classification was assigned.

Standard Exceptions

Three occupations are common to so many businesses that special classifications have been established for them. These *Standard Exception* classifications cover clerical office and drafting employees; drivers, chauffeurs, and their helpers; and outside salespersons, collectors, and messengers. Employees covered by a standard exception classification are not included in a basic classification unless the basic classification language specifically includes them.

While the Basic Manual provides specific instruction for the use of the standard exception classifications, generally, clerical office or drafting employees are confined exclusively to office work in areas physically separated from other operations. Drivers, chauffeurs, and their helpers are engaged in duties in connection with a vehicle, including garage employees and those using bicycles. Outside salespersons, collectors, and messengers have their primary duties away from the employer's premises, but do not deliver merchandise.



General Inclusions

All of the basic classifications include certain operations which would be classified separately were they to be run as independent businesses. Such operations are called *General Inclusions* and include employee cafeteria operations, the manufacture of packing containers, medical facilities for employees, printing departments, and maintenance work. They are included in the scope of each classification because they are a routine part of most business operations.



General Exclusions

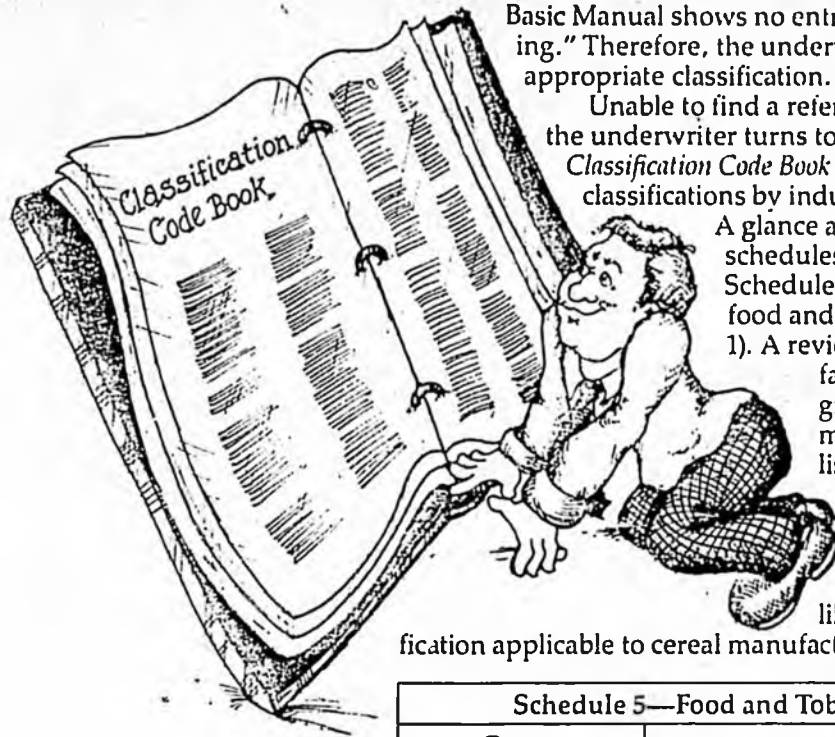
Just as some operations are general inclusions, there are other operations so exceptional that they are excluded from the scope of the basic classifications. These *General Exclusions* include aircraft operation, new construction by the insured's employees, stevedoring, and saw mill operations.

To summarize, insureds are assigned to classifications according to the principle of using the one classification that best describes the routine business of the employer, with the general inclusions, but excluding standard exception employees and general exclusion operations.



Classification Assignment

Having discussed the general theory of classification and the application of classifications, the approach followed by an underwriter or classifier in assigning a classification to an unfamiliar business will be described. Assume, for these purposes, that the insured is a small employer manufacturing corn flakes. A review of the classification pages of the Basic Manual shows no entry for "cereal manufacturing." Therefore, the underwriter must find the appropriate classification.



Unable to find a reference in the Basic Manual, the underwriter turns to the yellow pages in the *Classification Code Book* which lists the manual classifications by industry schedule and group.

A glance at the index of industrial schedules narrows the search to Schedule 5, which applies to the food and tobacco industries (Step 1). A review of the 32 schedules fails to indicate any other group under which cereal manufacturing might be listed.

By reviewing the groups comprising Schedule 5, Group 050, "Baking" seems the most likely to include a classification applicable to cereal manufacturing (Step 2).

Schedule 5—Food and Tobacco Industries	
Group Numbers	Industries
050	Baking
051	Grain, Sugar and Starch Products
052	Confections and Food Sundries
053	Dairy Products
054	Livestock Handling and Meat Products
055	Preserving and Canning
056	Brewing and Bottling
057	Tobacco

Group 051, which includes grain products, also would be considered, but the classifications in the group include beet sugar manufacturing, corn products, dextrine or starch manufacturing, grain milling and feed manufacturing, and sugar refining. These grain products are not similar to breakfast cereals, so the possibilities have been narrowed to the baking group. This process of elimination is quickly accomplished, even for a person not familiar with the classifications, because it is easy to determine at a glance which schedules and groups are inappropriate.

The search has been narrowed to Group 050, which includes four classifications (Step 3).

Group 050—Baking	
Bakery & salespersons, route supervisors, drivers	2003
Breakfast Food Mfg	2016
Cracker Mfg	2001
Macaroni Mfg	2002

The proper classification is Code 2016, entitled "Breakfast Food Manufacturing." Thus, by the process of progressively narrowing the search, the proper classification for corn flake manufacturing has been found. Essentially, this is the procedure undertaken by the classifier or underwriter when determining the appropriate classification assignment for each employer at the time the policy is issued.

While the object of the workers' compensation classification procedure is to assign the one basic classification which best describes the business of an employer within a state, a single classification may not be sufficient. In such cases, procedures have been established to provide for the use of more than one classification as required. For example, different basic classifications may be assigned to separate legal entities insured under a single policy.

If more than one legal entity may be combined in a single policy because of common ownership, in most jurisdictions each enterprise would carry its own basic classification code. Multiple basic classifications also may be assigned in two other circumstances. In the first, a basic classification may require that certain operations or employees be rated separately. For example, Code 4299—"Playing Cards Mfg."—contains the footnote, "paper or cardboard mfg. to be separately rated as 4239." In the second instance, multiple basic classifications may be assigned to an employer who operates a secondary business within the state requiring the assignment of an additional basic classification.

For the assignment of additional basic classifications, all of the following conditions must exist. The secondary business either must be conducted as a separate enterprise or, in accordance with the classification phraseology of the principal classification, it must be treated as a separate enterprise. Separate payroll records must be maintained and each business must be separated physically. Finally, the assignment of a separate classification must not be prohibited by any classification otherwise assigned to the policy.

While the general classification principle is to group similar businesses to produce a fair and equitable manual rate, this approach is not practical in the building trades where contractors undertake different projects using several construction trades for varying periods of time until completion of the project.

In the construction and erection industry it is not possible to define employers having similar average work forces, so each distinct kind of construction or erection operation at the job site is assigned to the classification specifically describing the trade, provided that separate records of payroll are maintained. For small specialty contractors, such as plumbers or electricians, this procedure produces the same result as is the case in non-contracting businesses—a single classification for the entire business. For larger general contractors using different trades during different phases of the project, the classification procedure produces multiple classifications on the policy and develops a manual premium weighted by the distribution of employee work in the several trades.

Because loss prevention and safety programs are developed generally for specific trades and skills, this classification approach for construction and erection incorporates the same safety incentive as the classification by industry for other kinds of businesses.

Classification Dynamics

The theory of classification has been reviewed and workers' compensation classification applications have been explained briefly. While insurance and classification theory require the grouping of like or similar employers with common expectations of losses, it would be a mistake to assume that the classification structure is a rigid, unchanging system in which square pegs are forever being forced into round holes.

There are two important ways in which the classifications used for workers' compensation are continuously changing and evolving. Each classification combines the payroll and losses of similar employers to develop a price for the protection. Through invention, discovery, and innovation, industries are continually refining and upgrading their operating procedures. More efficient manufacturing machines are developed, automation is introduced, raw materials sometimes change, and better assembly methods are devised. Such changes, however, do not occur overnight. Some employers are quick to innovate, while others hesitate to change tried and true methods. Gradually, however, new processes replace old, and the means and materials of business operations change while the basic product remains the same.

When annual rate revisions are made, total state premium needs are distributed to individual classifications, based on the three latest years of payroll and losses. A new year of experience is added annually and the oldest year is discarded. As industry conditions evolve, reflecting modernization and better conditions, so the experience upon which the rate is based continually changes. While the classification describing an industry may not change, the experience for that industry is continually changing and tracking conditions within the industry, with the manual rates revised accordingly.

One of the more common comments to the NCCI is that the classification language has not kept pace with the changes in industry nomenclature. The proverbial garbageman becomes a "sanitation engineer" and later a "solid waste manager," while the classification language still refers to garbage, ashes, or refuse collection. While classification language may not change as rapidly as fashion, the experience does change and reflects the use of newer equipment and operating techniques.

The second, and more important, way in which the classification system changes is through the continual monitoring by the NCCI and its member companies. Classification questions are reported to regional offices by local field offices and, in turn, by the regional offices to the NCCI headquarters in New York. Classifications generating frequent complaints are reviewed to determine whether revisions are needed.

When the workers' compensation system came into existence countrywide after 1911, approximately 1,400 classifications were inherited from workmen's collective and employers' liability coverage which had existed prior to the adoption of the workers' compensation laws. Between 1911 and 1919, the formative years of the workers' compensation system, the classifications were gradually reduced to approximately 800 in the early 1920's and then to approximately 600 in the early 1930's. From 1934 through the mid-1970's, there was no broad restructuring of the classification system. However, the introduction of new classifications over the years produced a net increase to approximately 700 classifications. In the mid-1970's, a major review was undertaken to eliminate and reassign approximately 100 classifications developing little or no payroll in most states. Thus, many of the 600 classifications now used describe industries and businesses that did not exist several years ago.

These changes in classifications have been the result of



requests from various groups of employers for separate classification treatment or the recognition by the insurance industry of the need for a single classification where two or more classes had applied. The typical request from outside the insurance industry for a new classification seeks a subdivision of an existing classification into the two or more components involved in the emergence of new methods of operation. For example, in 1977, a new classification was introduced for self-service gasoline stations, as distinct from a single classification for all gasoline stations.

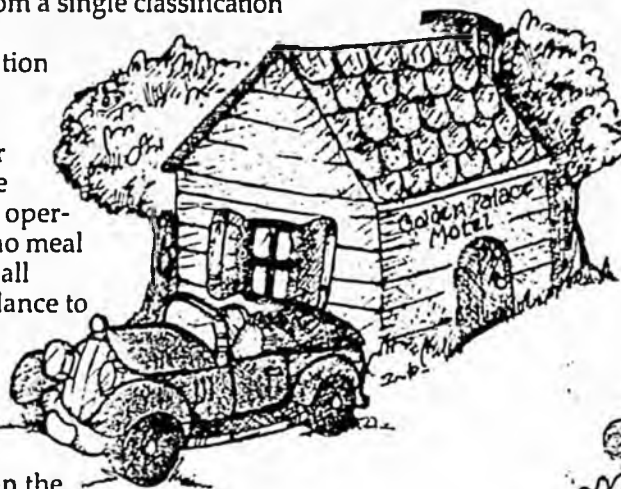
Perhaps the best example of evolution in the classification system itself is the motel industry. Until the mid-1940's, "motels" were usually tourist cabins or tourist courts and were classified in the manner as camps, i.e., under building operation. These early "motels" provided no meal service and were usually a series of small roadside cabins, bearing scant resemblance to the hotels found in urban areas. Travel increased after the Second World War, creating the need for better lodging facilities. This change was recognized by the introduction of a separate classification code for motels in the early 1950's.

By 1960, it became apparent that the loss emergence of hotels and motels was converging and, at that time, the two classifications were combined for ratemaking (producing the same rate for each) because of the similarity of exposure. Finally, in 1974, the separate classification code number for motels was discontinued in recognition of the fact that hotel and motel operations were virtually the same.

As part of the general upgrading of services over the years, motels gradually began to offer food service. Sometimes the motel would be next to a diner—perhaps operated by the same owners—or else would have a small area providing breakfast and basic meal service. Again, over the years conditions have evolved to the point where most motels provide food and entertainment services. Recognition of the distinction between motel operations and food service operations led to the creation of a separate classification for restaurants operated by motels. Thus, the history of this industry illustrates the response of the workers' compensation classification system to changes in business conditions.

The introduction and elimination of classifications is based on studies conducted by the NCCI and insurance carriers interested in a particular industry or classification problem. In general, the introduction of a separate classification requires a group of employers with similar methods of operation or producing a common product which can be distinguished from other businesses.

The group of employers also must be sufficiently large to produce payroll and losses which will be meaningful for ratemaking purposes.



"...new processes replace old, and the means and materials of business operations change..."



More attention is directed to the introduction of new classifications than to the elimination of classifications for industries or operations which have become obsolete. This is because the fading or diminishing of a classification does not call attention to itself. New industries, on the other hand, command attention because of the extra effort needed to determine the proper classification assignment by analogy or because of requests for recognition from the industry or its representatives.

Classification Administration

At the beginning of this booklet, it was explained that classifications are necessary for the development of a fair and equitable distribution of the overall premium among individual employers. Classification experience also is used as a predictor of future premium needs for each group of employers. For this reason, the classification system is the foundation upon which workers' compensation pricing rests. To the extent that any business is misclassified, the underlying data for two classifications are incorrect, for the wrong payroll and losses are added to the experience of the classification wrongly assigned and the correct classification lacks the payroll and losses properly assignable to it.

Accordingly, the administration of the classification system is one of the most important functions of the NCCI. This duty is carried out in two ways. First, the local field office receives a copy of each policy indicating the classification assigned. These are compared with records of prior coverage for consistency and continuity. If a classification appears improper, further information is sought from the insurance carrier and appropriate action is taken.

The second way in which the classification system is administered is through a systematic inspection program.

The inspection program is carried out by the local field office and involves a visit to the premises of the insured to obtain first-hand information concerning the nature of the business operation. At the local office, the inspection report then is reviewed by classifiers who issue classification notices to the insurance carrier. It has been NCCI's experience that no meaningful differences in classification develop from inspections in 80% of the cases. The remaining 20% divide almost equally between the need for higher or lower rated classifications. This indicates that while there is no inherent bias in the system to seek more business by underpricing, or higher premiums through misclassification, there is much room for reducing misunderstandings and misinterpretation.

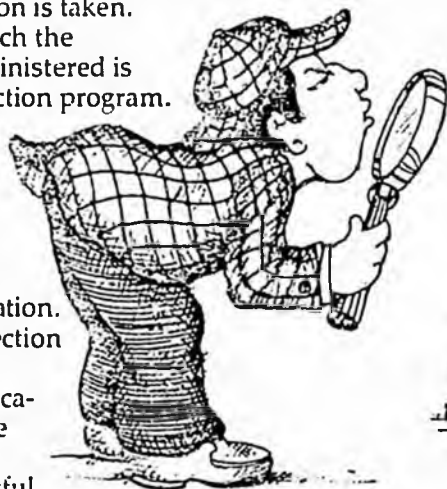
The inspection program is designed to periodically review individual insureds subject to experience rating. Particular attention is given to situations where an inspection is necessary to resolve a classification assignment question.

Concentration on the larger employers represents efficient allocation of resources because these businesses generate the bulk of the premium volume for most classifications. An inspection report, as can be seen in the example in Exhibit I, (see page 12) contains a description of the business operations, allocation of employees, machines in use, and a description of the finished products. The inspector also will look for interchange of labor and he obtains other basic identifying information needed for record keeping. Through the inspection program, the classification system is monitored continuously to ensure its proper application.

Conclusion

A properly functioning classification system is necessary both for a fair and equitable distribution of premium needs and for the development of the necessary statistical information to prepare manual rates. The average classification rate provides a reference against which individual employer experience is compared to develop a modification of the manual premium for employers subject to experience rating. This approach is a practical, proven system which produces a reasonable premium allocation. While other systems could be devised, the total premium needs would not be lessened and additional administrative costs might actually be greater.

The classification system places all employers conducting the same business in the same classification. This reflects the fact that employers engaged in the same business will have similar operations and employee distribution. The workers' compensation pricing programs are an interwoven system, with experience rating specifically designed to measure individual employer differences within a classification. The classification system is based upon sound insurance theory and is a practical, non-discriminatory procedure benefiting both the insurance buyer and seller by being cost efficient while promoting safety and loss prevention.



"The inspection program is designed to periodically review individual insureds subject to experience rating."

Compensation Classification Inspection Report

Exhibit I

Council on Compensation Insurance
COMPENSATION CLASSIFICATION INSPECTION REPORT

A _____
B _____
C _____
D ABC Corporation, 1234 Main Street, Anytown (Location Info)
E Mr. Doe, Plant Manager on January 15, 1982 (Person Interviewed)

Class Notice	Imnd	Ren	Retro
Carrier	_____	_____	_____
Office	_____	_____	_____
Date Reviewed	_____	_____	_____
Reviewer	_____	_____	_____
Policy #	_____	_____	_____

DESCRIPTION OF OPERATIONS:

- Do your operations change or does the number of employees fluctuate during the year? No
- How long has your firm been in business? 17 years
- Has there been any change in ownership in the last four (4) years? No
- Does this firm operate any other locations in this or any other state? No
- Is this firm related to other businesses? If so, list names and relationship. No
- Does this firm or any of its employees own, rent or operate aircraft in conducting its business or employees including executive officers, seating capacity of aircraft used, etc. No
- Does this firm subcontract or lease any operations? No

EXPLAIN ANY QUESTIONS ANSWERED AFFIRMATIVELY

GENERAL INFORMATION:

There are 4 major production departments in this operation. 67 employees are engaged in the fabrication of structural and non-structural steel according to the specifications of the equipment being produced. The steel is cut to rough dimension using OXY-acetylene torches. The fabricated parts are further shaped to finished proportions using grinders. These items form the frame work of the product.

36 employees are involved in machining aluminum and steel finished parts such as axles, bushings, hitches, and universal joints. These items are finished according to specifications.

49 employees receive the fabricated steel frame pieces, machined parts and assemble the product into finished units. Insured purchases precision parts such as ball bearings, auxiliary power engines from outside sources.

8 employees paint the finished products in a physical paint facility.

2 employees interchange labor in all departments to paint facility.

6 employees perform clerical duties.

3 employees act as outside salesmen.

3 employees deliver finished products to retail dealers.

The insured has not materially changed his operation in the past three years. He has not changed his ownership in the past three years. He has no other locations and owns no other business. Officers of this company receive no salary and aircraft for business purposes.

PRODUCT MANUFACTURED - TYPE OF BUSINESS
This insured manufactures mowing machinery, loaders, binders, hay loaders, and various types of plows. These products are designed to be towed by tractors and are primarily utilized in farming operations. In addition, this firm will fabricate unique farm machinery on a custom order basis.

MATERIALS USED IN MANUFACTURE - PRODUCTS SOLD
Steel Stock, Aluminum Stock, Precision Parts, Engines, Paint

DEPARTMENT OPERATIONS

	Building	Floor	Dept.	Physical Separation	Interchange Labor	# Emp.	Code
Steel Fabrication	1	1	1	yes	no	67	3507
Machining	1	1	2	yes	no	36	3507
Assembly	1	1	3	yes	no	49	3507
Painting	1	1	4	yes	no	8	3507
Quality Control	1	1	5	no	1,2,3,4	2	3507
						6 3 8	8810 7380 8742
TOTAL EMPLOYEES							

CLERICAL DRIVERS/HELPERS SALESMEN

INSPECTOR & DATE _____

CR-8-82 (REV 1)

NCCI Locations

NCCI National Office, New York City

**NCCI Rating Division and
Data Processing Center, New Jersey**

**NCCI Midwest Regional Office, 1999 Wabash Avenue, Suite 205,
P.O. Box 1238, Springfield, Illinois 62705—Monitors NCCI
Offices Servicing Illinois, Indiana, Iowa, Kansas, Missouri,
Nebraska, Oklahoma and South Dakota**

**Illinois Council on Compensation Insurance, 1999 Wabash
Avenue, P.O. Box 1666, Springfield, Illinois 62705—
Services Illinois**

**Indiana Compensation Rating Bureau, 5920 Castleway, West
Drive, P.O. Box 50940, Indianapolis, Indiana 46250—Services
Indiana**

**Kansas Council on Compensation Insurance, P.O. Box 1577,
3601 West 29th Street, Topeka, Kansas 66601—Services Kansas**

**Missouri Council on Compensation Insurance, 10825 Watson
Road, P.O. Box 8530, St. Louis, Missouri 63127—Services
Missouri**

**North Central Council on Compensation Insurance, 4685 Merle
Hay Road, OakMoor II, Suite 101, Des Moines, Iowa 50323—
Services Iowa, Nebraska and South Dakota**

**Oklahoma Council on Compensation Insurance, 777 N.W.
Grand Boulevard, Suite 100, Oklahoma City, Oklahoma 73118—
Services Oklahoma**

**Coal Mine Council on Compensation Insurance, 10825 Watson
Road, P.O. Box 8530, St. Louis, Missouri 63127—Services Coal
Mines**

**NCCI Southern Regional Office, 320 Beacon Parkway, West, Box
C-40, Birmingham, Alabama 35283—Monitors NCCI Offices
Servicing Alabama, Arkansas, Florida, Georgia, Kentucky,
Louisiana, Mississippi, South Carolina and Tennessee**

**Arkansas Council on Compensation Insurance, 307 Donaghey
Building, 7th & Main, Little Rock, Arkansas 72201—Services
Arkansas**

**Florida Council on Compensation Insurance, North Regency
One, Suite 300, 9485 Regency Square Boulevard, P.O. Box 8899,
Jacksonville, Florida 32211—Services Florida**

**Louisiana Council on Compensation Insurance, 3501 North
Causeway Boulevard, Suite 600, Metairie, Louisiana 70002—
Services Louisiana**

**South Carolina Council on Compensation Insurance, 3710
Landmark Drive, Suite 109, P.O. Box 4383, Columbia, South
Carolina 29240—Services South Carolina**

**Southeastern Council on Compensation Insurance, 320 Beacon
Parkway, West, Box C-40, Birmingham, Alabama 35283—
Services Alabama, Georgia, Kentucky, Mississippi and
Tennessee**

**NCCI Western Regional Office, One Tamarac Square, Suite 500,
7555 E. Hampden Avenue, Denver, Colorado 80231—Monitors
NCCI Offices Servicing Alaska, Arizona, Colorado, Idaho,
Montana, New Mexico, Oregon and Utah**

**Alaska Council on Compensation Insurance, 620 S.W. 5th
Avenue, Suite 1110, Portland, Oregon 97204—Services Alaska**

**Montana Council on Compensation Insurance, 620 S.W. 5th
Avenue, Suite 1110, Portland, Oregon 97204—Services Montana**

**Mountain States Council on Compensation Insurance, One
Tamarac Square, Suite 504, 7555 E. Hampden Avenue, Denver,
Colorado 80231—Services Arizona, Colorado, Idaho, New
Mexico and Utah**

**Oregon Council on Compensation Insurance, 620 S.W. 5th
Avenue, Suite 1110, Portland, Oregon 97204—Services Oregon**

**NCCI Eastern Regional Office, 998 Old Eagle School Road, Suite
1210, Wayne, Pennsylvania 19087—Monitors NCCI Offices
Servicing Connecticut, District of Columbia, Maine,
Maryland, New Hampshire, Rhode Island and Vermont**

**Mid-Atlantic Council on Compensation Insurance, 305 W.
Chesapeake Avenue, Baltimore, Maryland 21204—Services
District of Columbia and Maryland**

**Northeastern Council on Compensation Insurance, P.O. Box 60,
21 Wintonbury Mall, Bloomfield, Connecticut 06002—Services
Connecticut, Maine, New Hampshire, Rhode Island and
Vermont**

STEVE COWPER
GOVERNOR



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

December 18, 1987

Honorable Tim Kelly
Chairman
Senate Committee on
Labor and Commerce
3111 C Street
Suite 545
Anchorage, Alaska 99503

Honorable Dave Donley
Chair
House Committee on Labor
and Commerce
3111 C Street
Suite 450
Anchorage, Alaska 99503


Dear Chairman Kelly and Chairman Donley:

I wish to take this opportunity to thank the members of the Labor/Management Workers' Compensation Task Force who employed their own time and money to put together the report you will review today. I am always encouraged by the initiative shown by private citizens.

I know that the State Department of Labor put considerable time into providing information to the task force. This analysis of data and the suggested alternatives will provide a major focus for our thinking on this issue which is at the heart of the relationship between workers and business.

I commend the task force for its innovative and thoughtful approach to this complicated issue and look forward to working with your committees on appropriate solutions.

Sincerely,


Steve Cowper
Governor

①

STATE OF ALASKA
DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT
DIVISION OF INSURANCE
P. O. BOX D
JUNEAU, ALASKA 99811

Opening Comments for Public Meeting Concerning Revised
Workers' Compensation Insurance Rates to be Effective
January 1, 1988.

Good afternoon. My name is Don Koch. I am a special Deputy for the Alaska Division of Insurance. This is not a hearing in the usual sense. This is a public informational meeting or forum designed to give you an opportunity to hear how the worker's compensation rate filing effective on January 1, 1988 was constructed. Hopefully an insight and understanding as to how that process developed.

With me today are two representatives of the National Council on Compensation Insurance, Mr. Stan Sparks and Mr. Mark Mulvanney.

My opening remarks borrow freely from an Order I wrote last December concerning a rate filing that was under consideration at that time. Much is unchanged from that time to this.

The the National Council on Compensation Insurance is a national rating organization licensed by the State of Alaska. The members and subscribers of the the National Council on Compensation Insurance are insurance companies writing worker's compensation insurance in the various states. The the National Council on Compensation Insurance does statistical compilation of data, including premium, payroll, loss and expense data, on behalf of its member and subscriber insurance companies. It makes rate and policy form filings with the State of Alaska on behalf of its member and subscriber insurers.

On October 16, 1987, the the National Council on Compensation Insurance filed a rate change for worker's compensation insurance on behalf of its member and subscriber companies to be effective January 1, 1988 on new and renewal policies. The overall statewide premium level increase resulting from implementation of that filing is 25.1%. The components of the increase are:

- increase due to experience..... +22.1%
- increase due to change in trending +01.3%
- reduction to reflect anticipated decrease in the state
average weekly wage..... -00.01%
- increase for tax to reflect Guaranty Fund Assessments.. -01.1%

The overall average of 25.1% is further broken down into four (4) major industry groupings, each with a different impact from the filing reflecting that groups' contribution to the loss level. The industry groups are manufacturing, contracting, oil & gas, and all other. Within the groups, individual classifications can move an additional $\pm 25\%$ from the group overall indication, further reflecting the particular experience of the individual classification. The four groups, the indicated rate change by group, and the range of rate movement for classifications in each group are:

<u>GROUP</u>	<u>IMPACT</u>	<u>RANGE of IMPACT</u>
Manufacturing	+10.5%	-14.0% to +36.0%
Contracting	+29.0%	+4.0% to +54.0%
Oil & Gas	+43.0%	+18.0% to +68.0%
All Other	+17.6%	-7.0% to +43.0%

These impacts are distributed to individual classifications. There are a total of 546 classifications used in the the National Council on Compensation Insurance classification manual. Of the 546 classifications, 434 classifications had some payroll for the period used to determine classification relativity in Alaska. Of that 434 classifications, about 116 classifications had more than \$10 million of payroll over a three year period in Alaska. The total numbers of classifications in the manual by industry group are:

GROUP	TOTAL NCCI CLASSES	SOME ALASKA PAYROLL	+10 MILLION ALASKA PAYROLL
Manufacturing	294.	102.	7
Contracting	67.	63.	27
Oil & Gas	11.	11.	7
All Other	174.	158.	75

The current filing is not unusual in terms of the review process that led to its filing with the Division of Insurance. Much of the methodology utilized tracks with filing methods that have been used in the past in this state and found to be acceptable in past reviews. It is, in a sense, routine, though its impact is not.

Since 1974, Market Surveillance Section of the Division of Insurance, has closely monitored workers' compensation insurance experience of insurers writing that line of insurance in Alaska. The purpose was to measure competition and to develop an independent base with which to gauge the proposals of the National Council on Compensation Insurance. By applying Division of Insurance devised formulas and tests to this base information, which is limited in its sophistication, the Division of Insurance has generally been able to predict rate changes within two or five percent of the actual proposal and to do so about six months before a filing is proposed. In other words, it gets us in the ball park concerning what to expect. Since this approach does lack sophistication and is not accurate to the degree desirable for ratemaking purposes, the results of these tests have not been widely publicized. One concern is that the tests done by the Division of Insurance should not be available for potential use by insurers as part of the support for rate change proposals.

Utilizing this process, I noted in June 1986 that there was a likelihood of a significant filing to be effective on January 1, 1987. At that time the Market Surveillance Section concluded that a 21.5% overall premium level increase would be needed and that due to data anomalies the true need was probably closer to 30%. The data anomalies referred to, are the impacts of reserve strengthening attributable to prior years.

Using a similar process this year, I concluded that a filing in the range of 33% would be needed for 1988. I also noted that certain tests applied by insurance commissioners across the country suggested that the majority of insurance companies writing worker's compensation insurance have substantial reserve deficiencies based on the latest filings of annual reports. This, if anything tends to suggest that the need is even greater than our tests indicate that it is. Again there are data anomalies that, given an adequate data base and sufficient sophistication, are subject to fine tuning and development of a believable rate indication, albeit unpopular.

Typically, the Division of Insurance looks at losses in relation to the premium accompanying the losses. Recently, I had occasion to look at losses isolated from the premium and I had a bit of a shock. In 1983 worker's compensation losses were \$70,678,000; in 1984, they were \$89,789,000; in 1985 they were \$124,447,000; and in 1986 they were \$150,294,000. That is more than doubled in a four year period and with a decreasing payroll base to boot.

When the Division of Insurance receives an insurance rate filing from an insurance company or a rating organization such as the National Council on Compensation Insurance, it does so under standards found in AS 21.39.030 which provide that the rates shall not be excessive, shall not be inadequate, and shall not be unfairly discriminatory.

The documentation provided with the filing supports the contention that the current rate structure is inadequate. Independent data developed by the Division of Insurance suggests that the proposed level requested does meet the statutory tests.

The standards set forth in the rate law (AS 21.39) do not provide, nor should it provide, for the application of political or economic considerations when reviewing a rate filing. The law was specifically designed to avoid just that occurrence. Viewing it from these considerations, this filing could not have come at a worse time. The economy has been devastated by factors with which you are all familiar. These place pressures on such a filing which while recognized, can not be considered under the law.

The Division of Insurance does not influence the benefits available under the Alaska Workers' Compensation Act. Those are established by the legislature and administered by the Alaska Workers' Compensation Board. The Alaska Worker's Compensation Board generally becomes involved only with the specific request of the claimant, but the Division of Insurance can not. There is one additional party regularly appearing on the scene, again via the claimant, and that is the court system.

The Division of Insurance does not deal with individual consumer complaints involving workers' compensation insurance. These are the jurisdiction of the Alaska Worker's Compensation Board.

When the Legislature addresses an issue relating to workers' compensation insurance, the role of the Division of Insurance is to attempt, through the National Council on Compensation Insurance, to determine the price impact of the proposed legislation. The Division of Insurance does not and should not take an advocacy posture as respects changes to the benefit structure in the Alaska Workers' Compensation Act.

The Division of Insurance does have a strong role in the efficiency of operation of the rating systems utilized by insurers writing workers' compensation insurance. It has a strong interest in factors that affect the data base from which rates are derived. It is concerned with issues that can influence the accuracy of the data base underlying the rate structure. Because of these interests and concerns, the Division of Insurance wants to:

- assure the proper reporting and gathering of payroll data;
- assure the proper and equitable application of the filed classification system; and,
- assure the proper conduct of persons writing coverage for an employers workers' compensation liability.

During the public hearing held last year, witnesses testified to some of the frustrations experienced. In many cases, the Division of Insurance does not have jurisdiction to address the kinds of problem described. Numerous issues were discussed in the hearing and more in correspondence and in telephonic communications. Many times, the extent of recognition of these

problems is the stereotypical comment, "it's not my job." While to a great extent that may be true of the issues witnesses have brought to us in the hearing last year, we did commit to at least describe the issues for the benefit of those who may be in a position to address them or to dismiss them. This was done via the Order issued last December. The issues brought to our attention include:

- questions of jurisdiction;
- trying to determine whether an individual is an independent contractor or will be held to be an employee;
- trying to have something done about a claimant who is known to the employer to be malingering or abusing the system;
- dramatic change in cost with short notice;
- dealing with fraud;
- rate disparity between Alaska and other jurisdictions;
- subsidy within classifications;
- overpopulation of the assigned risk plan;
- the perception that board or court decisions are too liberal;
- the increasing cost of medical;
- the growth of the legal expenses in the system;
- the problems with the rehabilitation portion of the act;
- perception that the act is not enforced; and
- more.

When a rate increase such as this goes into effect, it applies to new and renewal business as has already been noted. This fact itself offers both pain for some and relief for others depending on when the particular employers' policy expires and whether the change is an increase or a decrease. It impacts the cost effectiveness of an employer depending at what point he is bidding a job and whether his workers' compensation insurance costs for the period bid are known when bidding. With that in mind, this proceeding today is the most notice that has ever been seen for a January 1 rate filing. In the future, this procedure will be used for experience based filings. You will have 60 days advance notice that a change is eminent. That is not a lot, but it is a significant advance over past practice.

STATE OF ALASKA

DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT

DIVISION OF INSURANCE

STEVE COWPER, GOVERNOR

P. O. BOX D
JUNEAU, ALASKA 99811-0800
PHONE: (907) 465-2515

December 2, 1987

MARK

Honorable Tim Kelly
Alaska State Senate
P.O. Box 21-0001
Anchorage, AK 99521

Dear Senator Kelly:

Re: Soldotna Hearing

Thank you for the opportunity to be of assistance during the hearing in Soldotna on November 27, 1987. Enclosed is a copy of the prepared remarks I presented then. Please note that some numbers on page 2 are different than those I gave in testimony. This printed version incorporates the correct numbers. These are:

I indicated that there were about 546 classifications in use by the National Council on Compensation Insurance; the number should be 543.

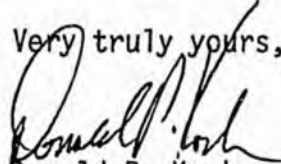
I indicated that there were about 400+ of those classifications with some payroll; the actual number is 338.

I indicated that there were about 116 or 118 of those classifications with a three year Alaska payroll in excess of \$10,000,000; the actual number is 120.

Also enclosed is a rate history of the 120 classifications. The payroll numbers are a three-year total. If needed, I can supply the breakdown by year. The three credibility numbers are a measure of how close to self-rating the particular class is for serious indemnity loss, nonserious indemnity loss, and medical loss.

I will be putting together the numbers you have requested during the hearing. As soon as they are complete, I will send them to you.

Very truly yours,


Donald P. Koch
Special Deputy

DPK/mst0603K
120287a

**Workers' Compensation Insurance
January 1, 1988 Rate Change
Soldotna Hearing, November 27, 1987**

Good afternoon. My name is Don Koch. I am a Special Deputy for the Alaska Division of Insurance. I head the market surveillance section within the Division, which is responsible for rates, forms, market availability, market contact, market conduct examinations, and market access. In addition to general oversight of the market conduct section, I am the person who deals with the Division's responsibility in the area of workers' compensation insurance.

As most of you know, the Division has received a filing from the National Council on Compensation Insurance which provides for a substantial increase in workers compensation insurance rates, and after review, has approved the filing for use as January 1, 1988.

The the National Council on Compensation Insurance is a national rating organization licensed by the State of Alaska. The members and subscribers of the the National Council on Compensation Insurance are insurance companies writing worker's compensation insurance in some 32 states. The National Council on Compensation Insurance does statistical compilation of data, including premium, payroll, loss and expense data, on behalf of its member and subscriber insurance companies. It makes rate and policy form filings with the State of Alaska on behalf of its member and subscriber insurers.

On October 16, 1987, the the National Council on Compensation Insurance filed a rate change for worker's compensation insurance on behalf of its member and subscriber companies to be effective January 1, 1988 on new and renewal policies. The overall statewide premium level increase resulting from implementation of that filing is 25.1%. The components of the increase are:

- increase due to experience..... +22.1%
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trending..... +01.3%
- reduction to reflect anticipated
decrease in the state average
weekly wage -00.01%
- increase for tax to reflect
Guaranty Fund Assessments..... -01.1%

The overall average of 25.1% is further broken down into four (4) major industry groupings, each with a different impact from the filing reflecting that groups' contribution to the loss level. The industry groups are manufacturing, contracting, oil & gas, and all other. Within the groups, individual classifications can move an additional ±25% from the group overall indication, further reflecting the particular experience of the individual classification. The four groups, the indicated rate change by group, and the range of rate movement for classifications in each group are:

<u>GROUP</u>	<u>IMPACT</u>	<u>RANGE of IMPACT</u>
Manufacturing	+10.5%	-14.0% to +36.0%
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period in Alaska. The total numbers of classifications in the manual by industry group are:

<u>GROUP</u>	<u>TOTAL NCCI CLASSES</u>	<u>SOME ALASKA PAYROLL</u>	<u>+10,000,000 ALASKA PAYROLL</u>
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Division of Insurance should not be available for potential use by insurers as part of the support for rate change proposals.

Utilizing this process, I noted in June 1986 that there was a likelihood of a significant filing to be effective on January 1, 1987. At that time, I concluded that a 21.5% overall premium level increase would be needed and that due to data anomalies the true need was probably closer to 30%. The data anomalies referred to, are the impacts of reserve strengthening attributable to prior years.

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Typically, the Division of Insurance looks at losses in relation to the premium accompanying the losses. Recently, I had occasion to look at losses isolated from the premium and I had a bit of a shock.

YEAR	LOSSES
1983	\$70,678,000
1984	\$89,789,000
1985	\$124,447,000
1986	\$150,294,000

That is more than doubled in a four year period and with a decreasing payroll base to boot.

When the Division of Insurance receives an insurance rate filing from an insurance company or a rating organization such as the National Council on Compensation Insurance, it does so under standards found in AS 21.39.030 which provide that the rates shall not be excessive, shall not be inadequate, and shall not be unfairly discriminatory.

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The standards set forth in the rate law (AS 21.39) do not provide, nor should it provide, for the application of political or economic considerations when reviewing a rate filing. The law was specifically designed to avoid just that occurrence. Viewing it from these considerations, this filing could not have come at a worse time. The economy has been devastated by factors with which you are all familiar. These place pressures on such a filing which while recognized, can not be considered under the law.

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The Division of Insurance does not deal with individual consumer complaints involving workers' compensation insurance. These are the jurisdiction of the Alaska Worker's Compensation Board. The Alaska Worker's Compensation Board is primarily an adjudicatory body, not a regulatory one. The Division of Insurance on the other hand is primarily a regulatory body. We can and do become involved in unfair trade practices, and we are currently are in the regulation adoption process for claim practices.

When the Legislature addresses an issue relating to workers' compensation insurance, the role of the Division of Insurance is to attempt, through the National Council on Compensation Insurance and whatever other resources to which we have access, to determine the price impact of the proposed legislation. The Division of Insurance does not and should not take an advocacy posture as respects changes to the benefit structure in the Alaska Workers' Compensation Act.

The Division of Insurance does however have a strong role in the efficiency of operation of the rating systems utilized by insurers writing workers' compensation insurance. It has a strong interest in factors that affect the data base from which rates are derived. It is concerned with issues that can influence the accuracy of the data base underlying the rate structure. Because of these interests and concerns, the Division of Insurance wants to:

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- assure the proper conduct of persons writing coverage for an employers workers' compensation liability.

During the public hearing held last year, witnesses testified to some of the frustrations experienced. In many cases, the Division of Insurance does not have jurisdiction to address the kinds of problem described. Numerous issues were discussed in the hearing and more in correspondence and in telephonic communications. In many cases, the extent of recognition of these problems should be the stereotypical comment, "it's not my job." While to a great extent that may be true of the issues witnesses have brought to us in the hearing last year, we did commit to at least describe the issues for the benefit of those who may be in a position to address them or to dismiss them. This was done via the Order issued last December following the hearing. The issues brought to our attention include:

- questions of jurisdiction;
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- dramatic change in cost with short notice;
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pain for some and relief for others depending on when the particular employers' policy expires and whether the change is an increase or a decrease. It impacts the cost effectiveness of an employer depending at what point he is bidding a job and whether his workers' compensation insurance costs for the period bid are known when bidding. With that in mind, the current filing is the most notice that has ever been seen for a January 1 rate filing. In the future, this procedure will be used for experience based filings. Employers will have 60 days advance notice that a change is eminent. That is not a lot, but it is a significant advance over past practice.

The Division is now attempting to identify areas of difficulty, with the aim to try to alleviate them. For example:

We will shortly be placing some new requirements on insurance companies to inform insureds about changes in the system which they intend to apply, and to do so up front rather than at audit.

The Division has available a number of publications printed by the National Council on Compensation Insurance which help to explain parts of the rating system. We routinely send these to persons requesting them.

We expect to have a consumer brochure ready for employers that will also provide what we hope will be helpful information.

We will be imposing revised rules concerning eligibility in the assigned risk pool when nonpayment of premium due is because of a contested audit.

We are now attempting to fill two additional positions which will be involved in market conduct examinations, thus giving us the ability to

physically review the files of an insurance company for compliance with Alaska law.

WORKERS' COMPENSATION RATE HISTORY
CLASSIFICATIONS WITH MORE THAN
\$10,000,000 FOR PERIOD 4/1/82 - 3/31/85
BY INDUSTRY GROUP

Prepared by: ALASKA DIVISION OF INSURANCE
November 25, 1987

WC RATE HISTORY

Page 1.

MANUFACTURING CLASSIFICATIONS †10.5%
Rate Range from -14.0% to †36.0%

Code Classification Credibility	Payroll (millions)	Rates per \$100 Payroll		
		1988 Change	1987 Change	1986
2003 Bakeries 18 32 70	16.8	7.40 †33.3%	5.55 †26.7%	4.38
2104 Seafood Processors 92 100 100	176.7	8.33 -4.3%	8.70 -12.0%	9.88
2111 Canneries 14 29 69	11.7	7.79 †16.9%	6.66 †25.4%	5.31
2802 Carpentry Shop Only 25 43 100	19.6	10.49 †25.2%	8.38 †27.0%	6.60
3632 Machine Shops 19 31 86	14.3	8.52 †11.0%	7.67 †27.0%	6.04
4207 Pulp Mfg Chemical Process 9 15 65	11.0	3.82 †35.9%	2.81 -7.6%	3.04
4299 Printing 12 23 52	16.7	4.29 †27.6	3.36 †21.3%	2.77
4304 Newspaper Publishing 16 31 65	19.2	5.74 †1.9%	4.35 †11.2%	3.91
4740 Oil Refining Petroleum 24 30 81	17.3	6.15 -14.0%	7.15 0.0%	7.15

CONTRACTING CLASSIFICATIONS +29.0%
Rate Range from +4.0% to +54.0%

Code Classification Credibility	Payroll (millions)	Rates per \$100 Payroll		
		1988 Change	1987 Change	1986
3365 Welding or Cutting NOC 41 64 100	28.6	11.20 +15.3%	9.71 +17.7%	8.25
3719 Oil Still Erection or Repair 38 80 100	23.3	15.53 +38.3%	11.95 +7.3%	11.14
3724 Millwright 71 47 100	38.3	21.77 +54.0%	14.14 +45.9%	9.69
5022 Masonry NOC 33 44 77	14.0	14.16 +8.3%	13.07 +12.8%	11.59
5057 Iron or Steel Erection or Repair 68 53 100	13.8	51.68 +46.7%	35.22 +42.5%	24.71
5183 Plumbing NOC 100 100 100	198.9	11.73 +28.4%	9.13 +21.6%	7.51
5190 Electrical Wiring in Buildings 100 100 100	241.2	8.73 +10.3	7.91 +37.6%	5.75
5213 Concrete Construction NOC 100 100 100	81.2	23.98 +29.5%	18.51 +37.1%	13.50
5221 Concrete Floor Driveways Sidewalks 31 50 84	24.2	9.41 +20.0%	7.84 +16.8%	6.71
5403 Carpentry NOC 100 100 100	260.6	17.51 +28.9%	13.58 +7.3%	12.66
5445 Wallboard Installation in Buildings 45 67 100	31.6	16.84 +38.1%	12.19 +41.6%	8.61
5474 Painting or Paper Hanging NOC 45 63 100	32.9	10.66 +4.0%	10.25 +13.9%	9.00
5479 Insulation Work 30 46 92	11.4	22.45 +38.6%	16.19 +30.3%	12.42
5506 Street or Road Paving Repaving 59 86 100	32.9	22.67 +39.6%	16.23 -4.0%	16.90

CONTRACTING CLASSIFICATIONS Continued

5507 Street or Road Construction 72 75 100	82.1	10.50	6.82	7.10
		+54.0%	-4.0%	
5538 Sheet Metal Work Erection NOC 75 96 100	64.9	17.44	11.82	8.10
		+47.5	+46.0%	
5551 Roofing All Kinds 61 64 100	18.7	36.21	32.36	22.17
		+11.8%	+46.0%	
5606 Contractors Executive Supervisors 66 92 100	102.9	6.91	5.30	4.32
		+30.3%	+22.7%	
5646 Carpentry Const Private Residence 100 100 100	100.8	17.66	15.67	10.82
		+12.6%	+44.8%	
5651 Carpentry Const Priv Res 3 Story 54 71 100	31.6	18.80	14.41	13.85
		+30.4	+4.0%	
6204 Drilling NOC 59 75 100	19.0	38.50	25.14	22.88
		+53.1%	+9.9%	
6217 Excavation NOC 100 100 100	150.1	12.67	10.28	8.11
		+23.2%	+26.8%	
6306 Sewer Construction 68 61 100	26.5	19.11	18.37	16.06
		+4.0%	+14.4%	
6319 Gas Mains or Connections Const 37 53 86	26.5	8.72	8.38	8.72
		+4.0	+3.9%	
6325 Conduit Construction 45 62 100	35.1	10.08	8.41	8.04
		+19.8%	+4.6%	
7538 Elec Light or Power Line Const 72 69 100	26.9	31.60	21.26	16.66
		+48.6%	+27.6%	
8227 Contractors Permanent Yard 83 95 100	100.3	11.67	7.95	8.28
		+46.7%	-4.0%	

OIL AND GAS CLASSIFICATIONS +43.0%
Rate Range from +18.0% to +68.0%

Code Classification Credibility	Payroll (millions)	Rates per \$100 Payroll		
		1988 Change	1987 Change	1986
1320 Oil or Gas Lease Operators 100 100 100	286.7	7.17 +55.5%	4.61 -5.3%	4.87
6206 Oil or Gas Well Cementing 26 32 70	17.3	9.62 +18.0%	8.15 +6.9%	7.62
6216 Oil or Gas Lease Work by Contractor 100 100 100	133.8	24.19 +53.0%	15.81 +33.0%	11.89
6233 Oil or Gas Pipeline Construction 100 100 100	123.4	16.19 +68.0%	9.64 +19.5%	8.07
6235 Oil or Gas Wells Drilling/Redrilling 100 100 100	99.3	30.26 +18.0%	25.64 -6.1%	27.28
6237 Oil or Gas Wells Logging/Survey 36 34 88	20.5	15.15 +46.8%	10.32 +33.0%	7.76
7515 Oil or Gas Pipeline Operation 35 29 81	27.6	10.83 +51.8%	7.13 -4.8%	7.49

ALL OTHER CLASSIFICATIONS +17.6%
Rate Range from -7.0% to +45.0%

Code Classification Credibility	Payroll (millions)	Rates per \$100 Payroll		
		1988 Change	1987 Change	1986
1005 Coal Mining Surface 25 25 52	17.4	7.91 +6.8%	7.40 -9.8%	8.20
1165 Mining NOC Surface 34 40 100	24.0	9.27 +3.9%	8.92 +0.7%	8.86
4000 Sand or Gravel Digging 32 41 78	25.0	8.57 +22.0%	7.02 -7.9%	7.62
4361 Photographers 7 11 25	14.8	2.09 +33.1%	1.57 +13.8%	1.38
4511 Analytical Chemists 16 19 56	24.5	3.87 +28.5%	3.01 +33.2%	2.26
5191 Office Machine/Appliance Install. 18 25 69	48.1	2.21 +11.6%	1.98 +15.8%	1.71
7219 Truckmen NOC 100 100 100	87.4	20.60 +18.3%	17.41 +1.8%	17.10
7222 Truckmen Oil Field Equipment 65 53 100	21.5	20.60 +18.3%	17.41 +1.8%	17.10
7380 Drivers, Chauffeurs, & Helpers 42 54 100	60.4	10.12 +43.0%	7.08 +38.8%	5.10
7382 Bus or Taxicab Companies 34 30 100	19.0	10.87 -7.0%	11.68 +38.9%	8.41
7390 Beer or Ale Dealers 24 42 96	12.9	17.58 +43.0%	12.30 +39.0%	8.85
7405 Aircraft Scheduled Flying Crew 26 22 53	25.9	3.97 -7.0%	4.26 -42.1%	7.36
7414 Aircraft Ground Crew 44 95 100	118.7	4.52 +12.7%	4.01 +3.6%	3.87
7421 Aircraft Transportation of Employees 34 29 156	13.4	10.86 -7.0%	11.67 -11.0%	13.11

ALL OTHER CLASSIFICATIONS Continued

7422 Aircraft Air Taxi Flying Crew 61 44 100	35.4	17.60	18.92	16.31	-7.0%	+16.0%
7431 Aircraft Commuter Flying Crew 26 30 62	15.2	11.78	8.24	14.23	+43.0%	-42.1%
7502 Natural Gas Companies 21 23 80	18.1	7.67	6.47	4.66	+18.5	+38.8%
7520 Water Works Operation 12 18 38	11.4	5.89	4.12	3.96	+43.0%	+4.0%
7539 Elec Light & Power Co NOC 22 26 73	31.4	5.42	3.88	3.61	+39.6%	+7.4%
7540 Elec Light & Power Coops Rural 31 37 83	35.1	5.54	4.90	4.31	+13.0%	+16.4%
7580 Sewerage Disposal Plant Operation 13 23 43	15.8	4.75	3.69	3.58	+28.7	+3.0%
7600 Telephone & Telegraph Cos. 31 49 100	62.0	3.80	3.24	2.51	+17.2%	+29.1%
7605 Alarm Systems Install & Repair 10 19 54	13.5	4.41	3.57	2.72	+23.5%	+31.2%
7610 Radio & Television Stations 76 70 100	139.8	5.30	4.33	3.12	+22.4%	+38.8%
7704 Firemen 21 31 81	19.1	7.91	6.44	6.10	+22.8	+5.6%
7720 Policemen 74 74 100	90.6	6.60	6.43	6.13	+2.6%	+4.9%
8006 Grocery Stores Retail No Fresh Meats 33 45 100	31.8	7.52	8.08	7.73	-7.0%	+4.5%
8008 Clothing or Dry Goods Stores 16 31 73	68.3	1.67	1.41	1.40	+18.4%	+0.7%
8010 Hardware Stores 26 39 100	61.5	4.25	3.71	2.67	+14.5%	+19.0%
8013 Jewelry Stores 6 8 17	20.5	0.80	0.76	0.72	+5.2%	+5.6%

ALL OTHER CLASSIFICATIONS Continued

Code Classification Credibility	Payroll (millions)	Rates per \$100 Payroll		
		1988 Change	1987 Change	1986
8017 Store Risks NOC Retail 35 72 100	170.6	5.15 +32.3%	2.38 +3.5%	2.30
8018 Store Risks Wholesale 21 44 82	31.6	5.54 +32.8%	4.17 +8.0%	3.86
8033 Stores Meat Combined Grocery Retail 39 61 100	103.7	3.39 +4.6	3.24 +15.7%	2.80
8039 Department Stores Retail 12 26 60	30.0	2.55 +9.9%	2.32 +11.0%	2.09
8044 Furniture Stores 16 29 65	26.1	3.72 +10.7%	3.36 +6.0%	3.17
8046 Auto Accessories Stores Retail NOC 8 12 34	11.4	3.66 +26.6%	2.89 +26.2%	2.29
8058 Lumber Yard Store Employees 13 26 55	23.1	4.21 +42.7%	2.95 +24.4%	2.37
8107 Machinery Dealers NOC Store & Yard 46 58 100	54.4	6.93 +15.3%	6.01 +23.4%	4.87
8232 Lumber Yards All Other Employees 66 96 100	51.4	12.87 -4.9%	13.52 +39.0%	9.73
8292 Storage Warehouses General Merch. 31 58 87	35.0	5.36 -4.8%	5.63 -11.0%	6.32
8293 Storage Warehouses Furniture 46 72 100	22.8	18.64 +16.1	16.05 +19.1%	13.48
8530 Gasoline or Oil Dealers 34 39 100	33.0	9.59 +43.0%	6.71 +39.0%	4.83
8385 Bus or Taxicab Garage 15 24 49	12.7	6.21 +15.8%	5.36 +9.2%	4.91
8387 (*8380) Auto Accessories Sercv Statns 36 62 100	54.9	8.33 +32.0%	5.48 +8.1%	5.07

* Note: Codes 8387 & 8391 Discontinued. New Class Code is 8380.

ALL OTHER CLASSIFICATIONS Continued

Code Classification Credibility	Payroll (millions)	Rates per \$100 Payroll		
		1988 Change	1987 Change	1986
8391 (*8380) Auto Garages & Repair Shops 100 100 100	152.4	8.33 +2.3%	8.14 +36.6%	5.96
8393 Auto Body Repairing 16 23 60	13.6	7.41 +24.5%	5.95 +24.7%	4.77
8601 Engineers or Architects Consulting 50 77 100	198.8	2.92 +24.2	2.35 -7.1%	2.53
8606 Geophysical Exploration Seismic 32 53 100	33.3	9.22 +23.5%	7.46 +37.1%	5.44
8607 Geophysical Exploration NOC 24 27 65	21.7	6.33 +18.0%	5.36 +35.4%	3.96
8742 Salesmen, Outside Messengers 60 73 100	594.0	1.11 +27.5%	0.87 +1.1%	0.86
8748 Automobile Salesmen 13 16 40	47.1	1.57 +43.0%	1.10 -1.8%	1.12
8755 Labor Unions 13 11 29	27.5	2.09 +39.3%	1.50 -5.7%	1.59
8803 Travelling Auditors, Accountants 5 7 17	43.4	0.47 +42.4%	0.33 +13.8%	0.29
8810 Clerical Office Employees 100 100 100	2330.0	0.68 0.0%	0.68 -10.6%	0.76
8820 Attorney 14 19 46	143.2	0.54 +28.5	0.42 -10.6%	0.47
8829 Nursing Homes 26 46 100	31.1	8.57 +9.1%	7.85 +38.9%	5.65
8832 Physicians 16 27 74	191.2	0.47 -6.0%	0.50 +4.2%	0.48
8833 Hospitals Professionals 42 58 100	224.5	2.25 +42.4%	1.58 +13.7%	1.39

* Note: Codes 8387 & 8391 Discontinued. New Class Code is 8380.

ALL OTHER CLASSIFICATIONS Continued

Code Classification Credibility	Payroll (millions)	Rates per \$100 Payroll		
		1988 Change	1987 Change	1986
8835 Public Health Nursing Assns 20 36 66	39.1	3.24 +16.5%	2.78 +0.7%	2.76
8868 Colleges, Schools, Professional 36 66 100	611.9	0.66 +1.5%	0.65 0.0%	0.65
8901 Telephone or Telegraph, Office Empl 13 14 40	45.6	1.11 +2.7	1.08 +33.3%	0.81
9014 Buildings Operation by Contractor 30 54 100	48.9	6.00 +42.8%	4.20 +13.5%	3.70
9015 Buildings Operation by Owner/Lessee 36 67 100	49.5	9.78 +43.0%	6.84 +34.4%	5.09
9033 Housing Authorities 12 24 48	17.2	4.28 +22.6%	3.49 +21.1%	2.88
9040 Hospital, All Other 38 61 100	44.6	11.34 +32.0%	8.59 +37.7%	6.24
9052 Hotels 44 69 100	86.3	6.06 +18.3%	5.12 +14.3%	4.48
9058 Hotel Restaurants 39 72 100	84.6	6.82 +43.0%	4.77 +23.9%	3.85
9061 Clubs NOC 10 20 55	17.8	4.14 +28.9%	3.21 +14.3%	2.81
9063 YMCA YWCA 6 15 35	13.1	2.77 +19.3	2.32 +9.4%	2.12
9078 Commissary 88 100 100	89.4	12.40 +31.0%	9.46 +38.9%	6.81
9079 Restaurants 64 100 100	317.6	4.82 +34.6%	3.58 +25.6%	2.85
9101 Colleges or Schools All Other 39 64 100	93.6	3.62 +6.7%	3.39 +11.5%	3.04

ALL OTHER CLASSIFICATIONS Continued

Code Classification Credibility	Payroll (millions)	Rates per \$100 Payroll		
		1988 Change	1987 Change	1986
9402 Street Cleaning 20 27 70	13.4	8.80 +12.1%	7.85 +13.3%	6.93
9403 Garbage Collectors 28 38 91	16.5	9.60 -4.0%	9.99 +9.2%	9.15
9410 Municipal or State Employees 20 41 100	21.3	8.03 +10.0%	7.30 +36.2%	5.36
9519 Electrical Appliance Install/Repair 15 22 45	17.1	4.29 +13.1%	3.79 +14.5%	3.31
9586 Barber Shops, Beauty Parlors 4 11 18	19.1	1.04 +40.5%	0.74 +5.7%	0.70

Alaska State Legislature

SENATOR KEN FANNING
P.O. BOX 80929
COLLEGE, ALASKA 99708



P.O. BOX V—STATE CAPITOL
JUNEAU, ALASKA 99811
(907) 465-3880

Senate

January 18, 1988

Senator Tim Kelly, Chair
Senate Labor & Commerce Committee
Room 101, Capitol Building

Dear Tim:

Enclosed is a report which may be of help in your deliberations regarding SB 322, the Worker's Compensation bill.

Best regards,


Senator Ken Fanning

Enclosure

KF/gnt

Warren, Al ✓

JAN 11 1988

General Motors Corporation

ALFRED S. WARREN, JR.
VICE PRESIDENT

January 6, 1988

Senator Ken Fanning
Alaska State Legislature
P.O. Box V
State Capitol
Juneau, Alaska 99811

Dear Ken (or should I say Senator):

You asked for some information as to action GM has taken to control workers' compensation costs which might apply in Alaska given the current high costs of your program. We faced a similar situation in the state of Michigan (where we have almost 1/4 million employees) about ten years ago. The two-pronged approach which helped us in Michigan should work equally well in other states. We set out to identify and legislatively correct the most expensive and abusive practices in the Michigan law. At the same time, we looked internally to see what steps General Motors could take to better deal with those factors under our control.

In enacting law changes, we tried to deal with objective data rather than anecdotal information. This data came not only from the state agency and the insurance industry, but also, and most importantly in our view, from individual employers. We also engaged in extensive discussions with Labor regarding our costs and our proposed legislative solutions. It is our understanding that a similar Labor-Management group has been meeting in Alaska, and has recently developed a comprehensive legislative proposal. We have not seen the proposal, and therefore, can't comment on its substance. However, we do strongly support the concept of Labor and Management, the two groups most directly impacted by the workers' compensation system, working out a joint approach to solving system problems.

The second part of our strategy, internal improvements does not lend itself to governmental mandates. However, there is an educational role which government might consider. Those employers who have the most successful, enlightened internal programs should be encouraged to share their experience with others. In this regard, an Executive Summary of a very recent study by Michigan State University of our Lansing operations is attached. While Lansing still has room for additional improvement, this study does a good job of identifying the various kinds of programs that employers might consider in attempting to reduce their own costs.

Senator Ken Fanning
January 6, 1988
Page 2

Ken, I hope this material is helpful to you. If you have any questions or need additional information, please do not hesitate to call.

Congratulations on your new assignment. I am excited for you, and I know you will do well.

Most sincerely,

A handwritten signature in cursive script, appearing to be the initials 'AE'.

Attachment

from Al Warren

DISABILITY MANAGEMENT AND
REHABILITATION OUTCOMES:
THE BUICK-OLDSMOBILE-CADILLAC
LANSING PRODUCT TEAM REPORT
EXECUTIVE SUMMARY

Submitted by:

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Disability Management Project
School of Health Education, Counseling Psychology
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Michigan State University
513 Erickson Hall
East Lansing, Michigan 48824

This study is part of a major research project funded in 1984 by the National Institute for Disability and Rehabilitation Research, Grant # G008435058. The study was conducted during 1985-1986, and the report completed in 1987.

ACKNOWLEDGEMENTS

The researchers would like to acknowledge the support, guidance, and cooperation of personnel from the B-O-C Lansing Product Team during the various activities of this project. Most of all this work was made possible due to the leadership, technical assistance, and unconditional support of James M. Richards, B-O-C Lansing's Manager of Personnel Services. Special thanks also go to those willing to give interviews and assist the researchers in the data-collection phase of the project: Noah Wills, Patrick Beecher, Rueben Bessonon, Derrick Miller, Marilyn Bennett, Lance Martin, Martha Blonde, Keith Wander, James Sickle of UAW Local 652, and others. We also thank Alan Strohmaier for his valuable assistance in consultations and technical review.

With respect to project design and methodology, we recognize the helpful suggestions made by the members of our advisory council: Irving Bluestone, Eugenia Carpenter, H. Allan Hunt, Peter Griswold, Michael Moore, Michele Hunt, Annette Abrams, Carl Frost, and Douglas Langham. Valuable assistance on project design was also provided by Dr. Donald Stanton, Chief of the Division of Rehabilitation Medicine at MSU's College of Osteopathic Medicine.

We are also thankful for the support of William Hinds, Director of the School of Health Education, Counseling Psychology, and Human Performance at MSU.

This study is one product of a collaborative project. We wish to recognize the contribution of Donald E. Galvin, former principal investigator for the project, who assisted in all aspects of the study.

Cynthia A. Hockett provided research assistance on this project and the report was typed by Maxine Holp and Teresa Beck.

**DISABILITY MANAGEMENT AND REHABILITATION OUTCOMES:
THE BUICK-OLDSMOBILE-CADILLAC LANSING
PRODUCT TEAM REPORT**

EXECUTIVE SUMMARY

In 1984, Michigan State University received funds from the National Institute for Disability and Rehabilitation Research to conduct a research project under the title "Disability Management and Rehabilitation: An Analysis of Programs, Costs, and Outcomes." The purpose of the project is to study the disability and rehabilitation policies of three major Michigan employers, and also to document and analyze the disability costs and outcomes of these three employers.

The present report focuses on the Lansing operations of the B-O-C Lansing Product Team of General Motors, a large, private, self-insured, and highly unionized manufacturing organization. The Lansing Product Team employs approximately 24,000 hourly and salaried workers, representing about 5 percent of GM's total U.S. workforce.

One overall objective of the study was to obtain a better understanding of this particular operation's environment and the factors which promote or preclude the return to work of the disabled worker. Another objective was to document disability-related costs to this employer. Based on the availability of workers' compensation data, a more specific research purpose was to investigate relationships among workers' demographic characteristics, treatment-related variables, and resulting outcomes.

Results have been reported on two levels: (1) a descriptive discussion of organizational factors which make up the employer's approach to disability; (2) a presentation of statistical findings based on an analysis of workers' compensation data.

Organizational Structure: The B-O-C Lansing Product Team

GM's B-O-C Group is comprised of seven business units, three of which are marketing units and four of which function as production teams that operate the major production facilities. In Michigan, B-O-C operates three production units: the B-O-C Flint Product Team, the B-O-C Detroit Product Team, and the B-O-C Lansing Product Team (to be referred to hereafter by the short title "B-O-C Lansing"). The Lansing operation (Oldsmobile Division) was first established in 1897 and is the largest and oldest continuous automobile manufacturing site in the U.S. B-O-C Lansing takes responsibility for automotive body and chassis assembly, engine parts machining and assembly, press metal operations, plastic operations, paint spraying, bumper plating, and welding operations. B-O-C Lansing also serves as headquarters for operations in Kalamazoo, Michigan; Janesville, Wisconsin; Kansas City, Missouri; Lordstown, Ohio; and Pittsburgh, Pennsylvania. The six Lansing plants maintain a workforce of approximately 20,000 hourly and 4,000 salaried workers (as of July 1987) in about 300 job classifications.

With the recent merger of the Fisher Body and Oldsmobile divisions, a restructuring of responsibility led to the introduction of the Lansing Body Assembly Group, the Lansing Fabrication Group, and the Lansing Powertrain Group. Other organizational groups at B-O-C Lansing are responsible for the development of all Oldsmobile name plate automobiles and their marketing and service; for the Buick-Reatta car line; for product, facilities and manufacturing engineering; and for product assurance and reliability. Financial and personnel support functions are also provided, from the B-O-C Human Resources Center.

B-O-C Lansing's Human Resources Structure

The human resources component of B-O-C Lansing is organizationally situated in the Human Resource Center (Personnel Department) which is headed by the Lansing Product Team General Personnel Director. The main departments of this human resource component are Organizational Development, Medical, Safety,

Industrial Relations, Labor Relations, Security, Education and Training, and Personnel Services. The Personnel Services Department, through its various units, is responsible for the employment of both salaried and hourly personnel, and for the administration of all employee benefits, including pensions and workers' compensation. The Department also has units for liaison with Metropolitan Insurance and for handling litigation connected with workers' compensation.

Labor and Management Participation

Union Representation

Most hourly B-O-C Lansing employees are represented by the United Automobile Workers, under locals 602, 652, and 1618. Some salaried employees are represented by the United Plant Guard Workers of America. In addition there is a small group of employees who work in the Oldsmobile exhibit and display area who are represented by the AFL-CIO.

There are approximately 120 union officers, paid by GM, representing the rank and file in the B-O-C Lansing workforce. The 1984 labor agreement between GM and the UAW recognizes that the employer and employees work together to enhance the quality of the product. The purpose of the agreement is to provide collective bargaining relations between management and the union at the corporate and local levels. The national agreement provides for the local parties to negotiate procedures regarding seniority, wage rates and classifications, reductions in the workforce, and recall from lay offs. The agreement also provides for the local parties to negotiate on issues of health, safety, working conditions, etc. Seniority in most cases is the determining factor in recall rights. The collective bargaining agreement at the local level does contain certain provisions for the placement of restricted workers; these provisions, however, are not fully integrated into the overall rehiring and placement process negotiated by B-O-C Lansing and the local unions.

While there is support in the national and local agreements for equal employment opportunity, including special documentation emphasizing the importance both parties give to this matter, the agreements provide for no specific program in this area. General guidelines in the agreements, however, are binding on both parties. B-O-C Lansing has an Equal Opportunity Section which is responsible for Divisional Affirmative Action and other civil rights initiatives, and for community involvement with organizations representing women's, handicapper, and veterans' organizations. The Section also provides employee counseling on civil rights concerns.

Labor Relations at B-O-C Lansing

GM's Labor Relations Unit, as its name implies, is the company's central organization for dealing with matters of management/labor relations. At B-O-C Lansing this unit operates under the Personnel Department, and includes both staff in the personnel office and labor relations representatives in the various plants. The department has the responsibility to interact with the union in all matters and to handle all grievances including those relating to health and safety.

Among its major functions, the Labor Relations Unit has the following responsibilities: (a) to negotiate and administer local labor agreements with local unions and bargaining units; (b) to negotiate with the union shop committee to administer the grievance procedure; (c) to assist, counsel, and train supervisors in applying the provisions of labor agreements; (d) to provide assistance in discipline matters, which includes advising supervisors, holding training sessions on discipline administration, reviewing disciplinary procedures, investigating indefinite suspensions, and writing discharge letters; (e) to interact with personnel managers in carrying out their duties; and (f) to assist the Medical Department in placing individuals with restrictions.

Personnel Policies and Practices

Recruitment and Training

Salaried workers are for the most part recruited from universities and colleges and through the General Motors Institute, and to a lesser degree from the ranks of GM's own hourly workers. Hourly workers for B-O-C Lansing are initially recruited through the Michigan Employment Security Commission, with an interview at B-O-C Lansing following the initial recruitment.

Training of staff at B-O-C Lansing is carried out through the Education and Training Section, which offers a variety of training courses, ranging from technical training to supervisory skills. Employees are exposed to on-the-job and formal training, and a performance appraisal process is ongoing. In addition to these provisions for training and education, GM has a program at the local level that pays employees' tuition for approved college courses and other courses offered by outside facilities. The Training Department at B-O-C Lansing coordinates programs in education and training, offering opportunities in both technical and non-technical areas.

Wages and Financial Incentives

Wages for hourly employees are established by contract between the management and unions representing these employees during collective bargaining negotiations. In 1986 the average GM worker earned about \$14 per hour, plus benefits that effectively brought total hourly compensation to an average of about \$30.

The Attendance Control Program, a joint union-management initiative which began at B-O-C Lansing in January of 1985, is a system of incentives and disincentives that may affect a worker's benefits based on his/her rate of absenteeism. Under the program, employees who have perfect attendance Monday through Friday during a given thirteen-week pay period (one quarter) receive a perfect attendance award with additional cash awards for perfect attendance over three and four quarters. On the disincentive side, a controllable absence rate of 20

percent or more for an employee leads to reductions in certain benefit payments, such as holiday pay, paid absence, allowances, and sickness and accident benefits.

For the purposes of this program, employee attendance records are evaluated jointly by union and management officials, with counseling provided by jointly appointed personnel. The national and local agreements identify attendance as a factor in determining benefit entitlement and an unwarranted absence from work is seen as a breach of contract between the employee and employer.

Work incentive programs in place at all GM facilities include the following:

- (a) a Profit Sharing Program, available to employees after one year of service;
- (b) an Employee Stock Ownership Program for which both salaried and hourly employees are eligible, allowing employees to become owners of the corporation through buying shares of GM common stock;
- (c) a bonus system for eligible salaried employees.

Disability-Related Benefit Practices and Procedures

As a large, self-insured employer, B-O-C Lansing provides disability-related benefits through two units of its Benefits Department, located at the Human Resource Center: the Workers' Compensation Unit and the Sickness and Accident Unit now administered by Metropolitan Life Insurance. Individuals are covered from the first day of disability if they are hospitalized or if there is a documented injury. If they are disabled due to personal illness then benefits start on the eighth day of disability. If an illness or injury is accepted as compensable, payments are provided under conditions applicable under Michigan's workers' compensation law.

Workers' Compensation

Work-related injuries and illnesses are referred to the Workers' Compensation Unit in three ways: (a) by the B-O-C Lansing Medical Department; (b) by Metropolitan Life Insurance; or (c) by the worker (self-referral).

Cases referred to the Workers' Compensation Unit through the insurance company, Metropolitan Life, come as a result of an employee indicating a work-related injury on the sickness and accident benefits form. Workers' compensation cases are either voluntary, when the employer accepts liability, or litigated, when the employer does not agree that the injury was work-related. Disputed cases may include both new cases and reinjury cases.

For cases determined appropriate for compensation, the benefit level is calculated based on the state's worker's compensation law. The final weekly compensation figure amounts to approximately 80 percent of the averaged after-tax wage. The weekly benefit in the State of Michigan, however, may not exceed a maximum of \$391 as of 1987. Benefits are paid and monitored by the Medical and Workers' Compensation Departments to determine if they should be extended or terminated. Payment may be made on a weekly basis or as a negotiated lump sum amount depending on the legal status of the claim.

After cases are accepted for benefits, the Medical Department and the Workers' Compensation Unit continue to monitor the individual's recovery. The cases are reviewed on a regular basis and may be referred for evaluation and/or for rehabilitation.

In the State of Michigan, workers' compensation law requires that after an employee has been out of work for 90 days, a report be filed with the Bureau of Workers' Compensation outlining rehabilitation considerations. This report is required from the employer every four months. Rehabilitation may involve initial client assessment and recommendations, work assessment, or long-term case management.

In addition to the coordination that occurs between workers' compensation and sickness and accident benefits, workers' compensation benefits are coordinated with other benefits and wages received by the employee. Social security old age benefits and/or pension benefits are coordinated under Michigan law. The amount

paid by social security old age benefits is deducted from the workers' compensation benefit, and an individual receiving pension benefits will have these offset depending on date of injury before receiving workers' compensation.

Sickness and Accident Benefits

These benefits are now administered on behalf of B-O-C Lansing by Metropolitan Life Insurance. Up until 1986, the Sickness and Accident Unit was administered internally by B-O-C Lansing. To apply for sickness and accident (S&A) benefits, an employee, or the person acting on behalf of the employee, must contact the S&A office to arrange a meeting with one of the benefits representatives.

Three types of benefits can be provided to employees who become ill or disabled as a result of any injury or sickness that is not work-related: sickness and accident benefits, extended disability benefits, or total and permanent disability benefits. Eligibility for these three benefits may be determined by the duration of the claim, evaluation of disability status, and/or length of service.

Sickness and accident benefits are reduced whenever the employee is eligible for coverage under the Michigan Workers' Disability Compensation Act. Cases that are clearly defined as work-related injuries or illnesses are transferred to the Workers' Compensation Unit. In cases that involve both the Workers' Compensation and the S&A Units, if the employee has been out for more than 14 days Workers' Compensation pays all benefits.

Specific Policies and Practices Directed toward Disability Management

B-O-C Lansing has implemented a number of programs aimed at enhancing employee health. There is, however, no specific policy providing for a unified disability management strategy. Policies in this area are presently governed by legal requirements for workers' compensation, affirmative action programs, and labor-management contractual provisions for placing restricted workers. To

date, the approach to disability has been one of individual departments providing specific services. Concern over rising health care costs and disability expenditures has stimulated a recognition of the need for comprehensive policies geared both to prevention and rehabilitation. At the end of 1985, a private consulting firm was hired to investigate cost containment strategies and to provide recommendations for the implementation of a disability management program within a systems approach. Subsequently, B-O-C Lansing has drawn together specialists from its medical, safety, ergonomic, vocational rehabilitation, and workers' compensation sections, and from UAW and plant personnel, to work with the consultant in identifying problem areas and providing strategies to address organizational needs.

Prevention and Early Intervention Programs

Preventing illness and disability at the workplace has become a major objective of most large employers including General Motors and B-O-C Lansing. In this respect, programs emphasizing safety, ergonomics, health promotion, and wellness, as well as employee relations or employee assistance programs, are often conducted by the employer. Programs aimed at reducing unnecessary absenteeism are considered important in this area as well.

Attendance Control Program

This program, intended to directly address the problem of excessive worker absenteeism, was agreed upon by GM and the UAW in their 1984 contract and implemented at the local level. The program offers monetary awards for good attendance and provides for a reduction in benefit levels as a result of excessive controlled absences. As well as offering incentives and disincentives, the program provides counseling for workers with attendance problems.

Safety and Ergonomics Programs

The Safety Department is responsible for the safety of all employees and the maintenance of a safe and healthy working environment. Industrial hygiene

and hazardous materials communication programs are two types of programs offered in the plants. Safety representatives are responsible for monitoring the environment and investigating possible breaches of safe practices. Emphasis is on educating employees as to the benefits of a safe working environment.

GM has recently instituted a program in the branch of industrial engineering called ergonomics, which involves the adaptation of production systems to the physical capabilities of workers. The B-O-C Group now has ergonomics coordinators within its industrial engineering staff, including coordinators working in individual plants. A main emphasis of the program is to coordinate ergonomic efforts as closely as possible to the plant floor, involving employees whenever possible.

Medical Services

B-O-C Lansing emphasizes the importance of general good health and quality health care through its Health Maintenance and Occupational Health Programs and plays a role both in prevention and rehabilitation through provision of direct and supportive health services. Preventive medical exams for all employees working in potentially hazardous environments are conducted along with programs on hypertension, cancer screening, and hearing conservation. Physical screening is also carried out when the employee is initially hired to identify physical characteristics that may make certain job duties or environments more or less suitable. Matching physical characteristics and job tasks, however, is not always an option, due to the need for flexibility in the manufacturing process. Floor supervisors, depending on the situation, may need to move employees to different jobs to address staffing shortages and to respond to fluctuations in the production cycle.

Ten aid stations staffed by registered nurses are located in the various plants. The stations operate through all shifts, providing on-the-job care. In cases of serious injury, workers are referred by the local aid station to the main

medical facility at HRC. After ten days the employee may decide on his/her physician of choice for further treatment.

A new physical therapy unit, staffed by a private consulting firm and jointly funded by B-O-C Lansing and the local UAW, is operational at the Human Resource Center to provide physical therapy for disabled workers. The program provides service for both personal and work-related injuries. If a worker has an industrial injury, he/she may receive physical therapy during work hours to facilitate an early and uninterrupted return to work. An employee may request physical therapy through the Medical Department or be referred to it by his/her treating physician.

The company sponsors the Bodycare health promotion program, which has been funded jointly by B-O-C Lansing and the local UAW since May, 1985. The objectives of the Bodycare program are to decrease health care costs and demonstrate union and management interest in the health of all employees. Areas of focus for the program are: (a) health risk appraisal, including blood pressure screening; and (b) health education in such areas as stress management, smoking cessation, prevention of back injuries, weight loss, nutrition, and exercise/aerobic programs. Services are provided both on-site and off-site to B-O-C Lansing employees.

The Employee Assistance Program (EAP) is another joint effort of GM and the UAW implemented at the local level. Its objective is to help employees who develop behavioral/medical problems that may affect job performance or attendance, including marital or family difficulties, financial or legal problems, and problems with substance abuse. A system for early identification, referral, and follow-up has been developed. Participation in the program is voluntary, but if help is refused and work-related problems become significant, normal disciplinary procedures go into effect. An employee may enter the program on his/her own initiative, or via the worker's supervisor, who in the event of serious work-related problems, may contact the program after consulting with the worker. Partici-

pation in the program is confidential and does not affect promotion opportunities.

Rehabilitation

B-O-C Lansing's major objectives regarding rehabilitation include: (a) assisting individuals who are injured on the job, or who become ill or disabled outside of their jobs; (b) facilitating a timely return to work; and (c) containing costs. Rehabilitation efforts at B-O-C Lansing include the appropriate management of disability by in-house vocational rehabilitation personnel, the effective use of necessary services from external vendors, and the timely administration of claims by benefit representatives. Medical, EAP and other personnel departments contribute to the rehabilitation approach adopted by B-O-C Lansing.

Vocational Rehabilitation

In 1983, in order to comply with the monitoring requirements of the Bureau of Workers' Disability Compensation, and in response to rising health care costs, individual compensation representatives in the Workers' Compensation Unit began referring disabled employees to private vocational rehabilitation firms. In January 1985, the company continued to provide for vocational rehabilitation services, but moved from a private delivery system to an in-house approach, utilizing private vendors when appropriate. Organizationally the program is housed in the Medical Department. Initially, the program focused on workers' compensation cases, but now it also serves recipients of sickness and accident benefits.

In making the move to an in-house approach, the professionals at B-O-C Lansing recognized the importance of devising an internal process to facilitate comprehensive case management for the rehabilitation of their injured employees. The goal of the program was to provide early vocational rehabilitation intervention to workers who become injured. The crucial component was a team approach utilizing workers' compensation, medical, placement, employee relations, floor supervision, and ergonomics personnel within the organization, with the rehabilitation specialist acting as coordinator of the process. A close working relation-

ship with the Bureau of Workers' Disability Compensation and with the UAW's workers' compensation representatives was also an objective of this new approach to vocational rehabilitation.

In addition to maintaining and developing the in-house program, the staff coordinated a review and evaluation of private rehabilitation providers, resulting in the selection of a small number of preferred vendors. The agencies were evaluated on specified criteria and a number of firms were selected to provide services for all appropriate referrals. The selection of rehabilitation firms was carried out in the interest of enhancing cooperation and communication among all parties, providing consistent case management, and enhancing cost management.

Early identification, along with a formalized, systematic referral procedure, was essential to the new approach taken by B-O-C Lansing. A formalized and documented system to identify and monitor the condition of the individual worker, and a computerized tracking system were developed, to monitor case status, vendor costs, and return to work outcomes on a monthly basis.

The major aims of B-O-C Lansing's in-house vocational rehabilitation program can be summarized as follows: (a) to provide optimal rehabilitation services to injured employees; (b) to reduce time off work due to disability through early identification and intervention; (c) to reduce medical and benefit costs through timely and coordinated planning; (d) to increase interdepartmental communication and cooperation (this is accomplished mainly through the team meetings); and (e) to enhance employee attitudes toward vocational rehabilitation through education and the accessibility of the team.

B-O-C Lansing has moved from a less systematic approach to rehabilitation to a more proactive stance. This has been accomplished by providing in-house vocational rehabilitation services to many of its injured/disabled workers, making a special effort to document cost savings with this new approach; implementing its physical therapy program; researching specific areas of concern for

disability management; and by investigating placement alternatives, such as transitional work programs, for those who are willing to return to work but cannot be placed immediately in regular jobs in the plants.

Conclusions Based on the Organizational Analysis

Overall there has been an increased commitment to human resources by this employer over the years. This is evidenced by the firm's efforts toward establishing quality of work life programs, profit-sharing plans for employees, improved health care and other benefits programs, and new physical and vocational rehabilitation programs to assist workers with injuries.

B-O-C Lansing continues to employ disabled persons, including their own workers who have become disabled. For example, in an effort to comply with affirmative action requirements an arrangement was developed with the State Vocational Rehabilitation Agency for the Blind and B-O-C Lansing to provide opportunities to hire and recruit individuals who are blind. Safety representatives within the plants provided training and follow-up. Up to this time, however, the company does not have in place a clearly defined formal policy for returning disabled or injured employees to limited duty. The development of such a policy may result, though, from B-O-C Lansing's current effort in the disability management area. Such a policy could provide objective criteria for placement in place of untested attitudes regarding worker capabilities.

Union and management representatives of B-O-C Lansing have recognized the need to work cooperatively for the good of all concerned. Recently, local union representatives have been involved with management in planning and developing the physical therapy unit and the wellness program, and in the development of the company's disability management project. Both parties have worked together over recent years to strengthen communication channels and eliminate the historically adversarial relationship between management and labor.

Workers' compensation costs at B-O-C Lansing have risen dramatically over the last few years. Investigation of this problem is currently under study with the assistance of an outside consultant working with local management and the UAW. With respect to the costs of disability benefits, B-O-C Lansing compares quite favorably with other GM operations in terms of short-term benefit costs. Cost containment strategies aimed at personal illness have not been as actively pursued as they have been in the workers' compensation area. One reason for this could be that there is no mandated rehabilitation provisions for this population. The fact that costs are viewed as within an acceptable range may also effect the amount of emphasis placed on cost containment.

General Motors' recent reorganization has been somewhat disruptive to B-O-C Lansing's efforts to integrate and coordinate the activities of various units. Overall, GM is like many other large companies: it operates a variety of health care, preventive, and rehabilitation programs, but these are not yet fully coordinated with each other or integrated into a comprehensive program.

B-O-C Lansing has a problem with absenteeism and lost work days due to short-term disability. To control absenteeism, the division has adopted a corporate wide, jointly administered Attendance Control Program, as outlined above. The program at B-O-C Lansing has not been evaluated by the corporation for its effectiveness, although there has been monitoring at the plant level. Less committed workers continue to have high absence rates in spite of incentives for good attendance. Reformulation of program guidelines is underway at the corporate level in an attempt to enhance the program's effectiveness.

Incentives to return disabled workers to work historically have not been clearly understood by the different layers of management and union representation at B-O-C Lansing. Efforts to remediate this lack of knowledge and understanding are underway so that return to work is recognized as being in the best interests of all parties. Emphasis is currently being placed on educating managers

and employees, and heightening their awareness regarding the hidden costs that accrue by not placing restricted employees. Employees at all levels are being made aware of how the financial costs of disability are recorded and reported. B-O-C managers from top down are being trained to realize that disability costs are sometimes related to their actions and can directly affect the bottom line. Costs for disability actions need to be tied to other indicators of efficiency and productivity that determine rewards.

In addition to the problem of incentives, an employer like B-O-C Lansing encounters labor contract problems in attempting to implement a return to work policy. The placement of restricted workers, for instance, is a delicate issue when considering the union's rules on seniority and job rights. A return to work policy may be seen as a means for a worker with less seniority to "bump" into a better job or as a way of depriving other workers of their rights under the local seniority agreement. This issue has been recognized by both management and the local unions at B-O-C Lansing. Both parties recognize the limitations placed on the placement of restricted workers by the seniority guidelines and are working together to consider possible alternatives. Job security for able-bodied workers, however, remains the union's major, overriding concern in the face of recent workforce cutbacks in the auto industry nationwide.

The use of job accommodations and job rotation as strategies to place restricted workers are not well developed at B-O-C Lansing. Job classifications and seniority rights limit the utilization of job rotation as a placement strategy. Due to the fact that there are usually two or more shifts operating in the plant, accommodations are also an issue. Not only does this require joint labor-management support but supervisors on all shifts must agree to the change. Gaining support is sometimes a cumbersome process. The fact that there is no management policy concerning these two interventions results in decisions being made at an individual level, and not guided by a unifying policy.

At the macro level of analysis, two important factors have guided existing disability-related policies and programs within the Lansing operation. These are the high cost of health care and other income benefits and recent reforms of the workers' compensation system in Michigan. To stay competitive, the firm redirected its policies to ensure that profits would not be negatively impacted by the costs of maintaining manpower. The goal was to maintain a healthy and lean productive workforce without excessive and inappropriate costs for medical and workers' compensation benefits.

More recently, vocational rehabilitation has been seen as a measure that can lead to cost savings. The emphasis on cost containment, a closer enforcement of rehabilitation referrals by the Rehabilitation Division of the Workers' Compensation Bureau, and a humanistic approach adopted by management interacted together and led to B-O-C Lansing's increasing use of vocational rehabilitation services.

Conclusions Based on the Statistical Analysis

The statistical part of the study involved an analysis of selected cost and outcome data gathered from the employer's workers' compensation case files. Four samples of 50 cases each were selected randomly from the company's list of 1985-86 active cases. The membership of the samples varied based on rehabilitation and return to work, as follows:

- Sample 1: Workers who received rehabilitation and returned to work.
- Sample 2: Workers who received rehabilitation and did not return to work.
- Sample 3: Workers who did not receive rehabilitation and returned to work.
- Sample 4: Workers who did not receive rehabilitation and did not return to work.

A fifth sample of 50 cases was added to the study at a later date. Sample 5 consisted of workers whose cases were coordinated by an in-house rehabilitation specialist and who returned to work.

Data collected from the files included information on: demographic charac-

teristics; health/disability status; job-related characteristics; treatment, services, or benefits received; and costs associated with benefits paid. The statistical analysis of the data was aimed at answering the following major questions: (a) With regard to the return-to-work outcome, were there particular employee or job-related characteristics that seemed to be associated with the fact that a worker returned to work and with the length of time it took a worker to return? (b) The professional literature supports the assumption that the sooner an ill or injured employee receives rehabilitation, the sooner he/she returns to work. Did this assumption hold for this employer? (c) Was the provision of rehabilitation cost-effective for this employer? In addition to seeking answers to these questions, the researchers also examined the data for notable trends in other areas. (Note: The relationships between variables pointed out in the following were found to be statistically significant, unless stated otherwise.)

Employee and Job-Related Characteristics and Return to Work

It was found that workers who returned to work, in comparison to those who did not:

- had higher seniority on average (15.55 years, in comparison to 12.02 years);
- had a higher average level of education;
- tended to be younger (40.5 years old);
- had fewer serious injuries;
- tended to have higher wages;
- tended to be married.

Also, the degree of wage replacement was found to be an important factor with regard to the return to work outcome, although this relationship did not quite reach statistical significance. A substantial difference between wages and workers' compensation benefits tended to lead to a return to work, presumably because of the economic incentive.

With regard to gender, there was a slightly higher number of males than females in the return-to-work group.

Time to Rehabilitation and Return to Work

The time lapse between the occurrence of an injury/illness and referral to rehabilitation services was found to be an important factor with regard to return to work. The shorter this time lapse, the more likely the worker was to return to work.

The Cost-Effectiveness of Rehabilitation

Timely referral to rehabilitation was found to lead to more favorable outcomes on the return-to-work variable; those workers who returned to work, in turn, were found, as expected, to cost the company less when compared to the entire sample of 200 cases. Only 44 percent of the cases in the total sample cost less than \$19,000 in workers' compensation benefits per case, while 70 percent of the cases in the return-to-work group cost \$19,000 or less.

The cost benefit of rehabilitation is illustrated more directly by the following: Of those workers who received rehabilitation and then returned to work, over 50 percent of the cases cost \$499 or less, and 32 percent fell in the \$500-\$1500 range.

Other Notable Trends Emerging from the Data

Age: The majority of injured workers in this study were between 30-39 years old.

Rehabilitation Strategies: Case management by an outside vendor was the most frequent type of rehabilitation received by workers in the samples. Independent medical evaluations were not consistently conducted and work tolerance/hardening training was very unlikely to be prescribed. With the implementation of the in-house program, however, case management strategies were coordinated to include independent medicals and work tolerance training when appropriate.

Return to Work: Through initiatives such as the in-house rehabilitation

approach and the emphasis on supervisory education, progress has been made by the company in returning injured workers to work. Eighty-five percent of workers who returned to work, however, were reassigned to different jobs in the various plants, showing that through the period covered by the study little attention had been given to modifying jobs to suit disabled workers.

Types of Injuries Sustained by Female Workers: A change has been observed in the types of injuries occurring in the female worker population. The data indicate that a large number of those who receive rehabilitation and return to work are, in addition to males with back/neck musculoskeletal injuries, females with upper extremity injuries. The number of females sustaining upper extremity injuries may be influenced by the large percentage of females hired in the 1984/1985 period. Physical requirements of particular jobs, machinery used, and body type may contribute to incidence rates when the job match is inappropriate. At B-O-C Lansing, as in most industries, there is a need to reconsider job and tool design as it relates to individual differences, particularly with regard to the female worker. It is also necessary to balance these concerns with the company's work needs and opportunities.

Recommendations

These recommendations are to be seen essentially as suggestions or overall guidelines for implementation, as applicable, according to the specific needs and objectives of B-O-C Lansing.

1. A more comprehensive and cohesive program for disability management should be developed by the Lansing operation. Besides focusing on return to work, the program should cover both the management of short-term and extended disability cases; policies for recruiting, hiring, and accommodating new disabled workers; and efforts to prevent the occurrence or aggravation of illnesses and injuries. Such a program would require full cooperation and organizational cohesive-

ness among the various programs and units/divisions, from those involved with health and prevention to those involved with rehabilitation. Endorsement for the program would need to be obtained from top level management and the UAW at both the local and international level. This support should be clearly communicated at all levels of the operation.

2. B-O-C Lansing could benefit from investigating further the feasibility of adopting a disability cost management program entailing four steps: (a) creating a disability management committee to oversee benefits administration; (b) conducting automated audits of disability claims, and monitoring cases when a worker is off work for more than seven days; (c) considering evaluating and strengthening the local contract language to provide placement procedures for disabled workers; (d) improving the acquisition and use of information by managers via coordinated reporting utilizing a computerized data base.

A disability management committee could be responsible for developing a consistent and clearly communicated disability management policy for the various departments administering disability benefits and related programs, and also for regularly reviewing its design and trends in claims. The committee would also act as the final decision making body on controversial and/or denied claims. Perhaps its most important function would be to assign responsibility to one individual for coordinating disability management-related programs and policies.

3. Improving management information could assist in heightening awareness of the costs associated with disability. Several different types of reports are recommended to keep management well informed. These include incidence, cost, and outcome reports at the plant level and the overall Lansing operations level.

4. A careful examination of trends in the incidence and costs of cases using extended disability benefits is also recommended. Depending on the results of such an investigation, improving and adding rehabilitation benefits for these

cases could prove to be most cost-effective in the near future. Greater involvement in monitoring incidence and cost data by financial staff would also strengthen the link and enhance communication between plant and financial personnel.

5. The researchers also recommend routine in-house evaluations of programs like the Attendance Control Program and other intervention programs to improve the working of these programs and to ensure that the programs' outcomes correspond with their goals.

6. The increased use of performance evaluations is recommended for workers who have problems with discipline and absenteeism, to plan for specific interventions and allow for follow-up. Information included in such evaluations would also be useful to supervisors in dealing with such workers, to union representatives responsible for informing workers of contract provisions, and to personnel staff in charge of such programs as the Employee Assistance Program. The researchers recognize the tracking problems inherent in this approach due to the frequent movement of employees within the plants. A system that would allow input by supervisors and follow-up by program staff could facilitate intervention if an employee was consistently identified through this system as experiencing problems.

7. The adoption of a clearly defined ergonomics policy and program, supporting the use of job accommodations, is recommended to assist in the placement of restricted workers. Ergonomic specialists in the plant could also provide support to supervision when accommodations are necessary and assist in the identification of potential job design problems. Job redesign and job rotation at the local collective bargaining level could also provide more placement opportunities for restricted workers as well as reducing the potential for strain injuries due to repetitive movements.

8. With respect to the placement of restricted employees, the following recommendations are made: (a) to increase union support of such practices by

having more explicit language included in local union contracts; (b) to discuss potential resolutions of discrepancies between Local 602 and 652 contracts with respect to returning restricted workers to work; (c) to increase formal educational efforts at all levels to promote a better understanding of the needs of disabled/injured workers; (d) to establish a committee of first-line supervisors, union representatives, and placement coordinators to formulate ways of placing restricted workers by assigning them to work-teams without unnecessary disruptions of the work flow; (e) to continue the development of a job analysis bank for jobs that are suitable to workers with restrictions and have departmental commitment that these job descriptions would be updated as necessary; (f) to study the feasibility of adopting a system that identifies potential jobs in the firm based upon an assessment of job characteristics and the limitations of restricted workers; and (g) to study the possibility of providing suitable accommodations at the worksite that would be acceptable to the union, management, and employees. Such a system could serve to expedite return to work decisions and save time for those in the firm responsible for placement.

9. The researchers also recommend an effort to communicate the disability management objectives to professionals in the community involved in the return-to-work and rehabilitation processes. Involved physicians, psychologists, attorneys, rehabilitation counselors, and other service providers need to be aware of these objectives so that they do not work at cross-purposes to them.

10. The firm should continue to strengthen its endorsement of early vocational rehabilitation by maintaining an internal coordination function and by using a combination of selected vendors and in-house rehabilitation counselors to perform case management. With regard to selecting outside providers, an annual review of vendors should emphasize the need for quality and cost efficiency in service provision. Vendors should be required to specifically report how many workers were returned to work and the cost savings to the company generated by

these successful closures. It is also important to consider the vendor's access to other outside reputable service providers so that quality in service provision, job retention, and cost efficiency can be achieved. Vendors should also be required to express very clearly their position on the issue of interest representation, to ensure that their practices properly balance the interests of the individual worker and those of the employer, with emphasis placed on returning the individual worker to his/her previous position if possible. Vendors' plans and experience data should be indicative of and consistent with their stated position.

In general, we should be careful about applying the results of the present study to other sets of data or using them to make extensive predictions about the characteristics of workers who return to work. The results are limited by the characteristics of the samples used in the study and reflect specific conditions existing within a particular employing organization at a particular point in time. The study's findings do not provide a complete and clear picture of the costs issue, a fact which itself indicates, perhaps, that there are no simple or easy answers to cost containment problems and that employers must continually struggle with the complicated task of combining high productivity and profits with a commitment to human resources. The best solutions are most likely to be those that are not aimed narrowly at cost containment but which are tailored to the specific requirement of a firm's organizational and human resource environment and to the level of endorsement of the rehabilitation philosophy by corporate leaders.

HOUSE LABOR AND COMMERCE COMMITTEE

ALASKA STATE LEGISLATURE

P.O. BOX V, JUNEAU 99811

(907) 465-3892



MARK

November 30, 1987

John George, Director
Division of Insurance - DCED
P.O. Box D (MS0800)
Juneau, Alaska 99811

Dear Mr. George:

The civility of the November 12 public hearing on the Division of Insurance and workers' compensation appears to have confused you. I am told, as a result of that hearing, that you believe my questions and criticism's of the Division have been satisfied and that I am now in support of your agenda.

That is not the case, and I'm writing to set the record straight. Specifically:

1. It is apparent by the Divisions' own records and through testimony offered at Thursday's hearing, that you are not in possession of sufficient data to justify approval of the recent rate increase for workers' compensation premiums. Therefore, I request that you notify me in writing by the end of this week what procedures need to be set in motion to disapprove the rate increase and to hold licensed insurers to rates no higher than what was approved in 1986.

2. I simply don't buy the Division's argument that lack of legal assistance from the Department of Law has prevented you from effectively policing the insurance industry. It is apparent to even a casual observer that the Division does not pursue consumer complaints or alleged violations of insurance statutes with any degree of sincerity or commitment. When a fox is in the henhouse, you don't sit on your butt doing nothing because you're out of ammunition. There is always kicking, gouging and screaming.

3. I oppose the Division's reorganization plan, as presented to our Committee. The plan does not meet legislative intent, nor does it provide for adequate consumer protection - the primary function of the Division.

4. During Thursday's hearing, the House Labor and Commerce Committee asked the Division to provide several pieces of backup information and documentation on several issues that were raised. I have received none of the requested information at this time and now I renew my request for same.

5. I would suggest in the future that you do not confuse lack of overt hostility or even simple rudeness with an endorsement of your personal policies. I remain convinced that the Division does an abysmal job of regulating the industry in Alaska and that we can no longer afford to take it in the shorts while some insurance companies laugh all the way to the bank.

I do wish to thank you and Don Koch again for your participation in the hearings. I for one learned much and your presence was very helpful. I am eager to follow up on the various ideas we discussed to help your Division better do its work.

Please feel free to contact me if you have any further questions or if I've failed to make my position clear.

Sincerely,

A handwritten signature in cursive script that reads "Dave Donley". The signature is written in dark ink and is positioned above the typed name.

Representative Dave Donley, Chair
House Labor and Commerce Committee

cc: Governor Steve Cowper
Commissioner Tony Smith
Members, House Labor and Commerce Committee



Official Business

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Juneau, Alaska 99811

MEMO

To: Senate Labor and Commerce Committee Members
House Labor and Commerce Committee Members

From: Sen. Tim Kelly
Chair, Senate Labor & Commerce Committee *TK*
Rep. Dave Donley
Chair, House Labor & Commerce Committee *DB*

re: Report by the Joint Management/Labor
Task Force on Workers' Compensation.

December 14, 1987

On Friday, December 18, at 10:00 a.m. in the first floor conference room of the Legislative Information Office, the Joint Management/Labor Task Force on Workers' Compensation will make a presentation to a joint meeting of the Senate and House Labor and Commerce Committees.

Their presentation will highlight proposed changes contained in their newly drafted legislation pertaining to the Workers' Compensation program.

All members are urged to attend as this important issue will be discussed in Labor and Commerce Committee meetings very early in the upcoming session.

HOUSE LABOR AND COMMERCE COMMITTEE

ALASKA STATE LEGISLATURE

P.O. BOX V, JUNEAU 99811

(907) 465-3892



September 25, 1987

M E M O R A N D U M

To: Chief Clerk's Office

From: Representative Dave Donley, Chair
House Labor and Commerce Committee

Re: Interim Meeting Schedule

Below is a tentative schedule for House Labor and Commerce hearings over the interim. The dates, places and agendas are subject to change if needed.

1. Friday, October 9, (Fairbanks):
(1:45 to 6:00 p.m.) - Social ills associated with chronic unemployment. (We have also scheduled the meeting room in Fairbanks for Saturday, October 10, if needed, although we anticipate being done by Friday at five).
2. Thursday, October 29 (Anchorage):
(All day) SMALL BUSINESS CONFERENCE
(9:00 a.m. to Noon) - Overview from various state agencies of programs to promote, support or advocate for small business.
(1:30 to 5:00 p.m.) - Take public testimony from the small business community about what they would like to see the legislature do next session to aid small business in Alaska.
3. Friday, October 30 (Anchorage):
(All day) - Continuation of SMALL BUSINESS CONFERENCE
(9:00 To Noon) - Continue public testimony, including any testimony on HB 202 - Corporation Code.
(1:30 to 5:00 p.m.) - Continue public testimony, specifically on workers' compensation issues as they effect small business in Alaska.
4. Thursday, November 12 (Anchorage):
(9:00 a.m. to Noon) - Overview of the Division of Insurance.
(1:30 to 5:00 p.m.) - Overview of Worker's Compensation in Alaska, take testimony, and review any proposed legislation.

5. Friday, November 13 (Anchorage):
(All day) - TORT REFORM - Take public testimony, review tort & insurance reform measures currently in the L & C Committee, and any proposed legislation.
(Tele-conference to Fairbanks, Juneau, and Mat-su 1:30 to 5:00 p.m.)

6. Wednesday, December 9 (Anchorage):
(10:00 a.m. to Noon - 1:30 to 5:00 p.m.)
Charitable Gaming in Alaska and markup HB 299 in preparation for next session.

Please call me or Ginger at 561-7629 if you have any questions or need additional information.

Mary A. Pierce
Insurance and Risk Management
Consulting Services

O.K.
check w/ Mark

July 21, 1987

Senator Kelly
3111 "C" Street
Suite 545
Anchorage, AK 99503

Dear Senator Kelly:

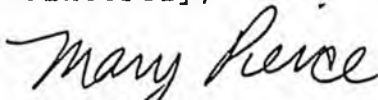
I would like to invite you to join us in a meeting of a joint labor and management task force on Workers' Compensation. This group, consisting of five labor members and five employer representatives, is attempting to arrive at solutions and a legislative remedy to the workers' compensation cost crisis.

We have already met to define issues and establish a plan for the 1988 legislative session as well as ones to follow. This is a highly complex issue which will not effectively be resolved quickly.

We are asking you as the Senator chairing Labor and Commerce to join us on August 11th at 7:30 a.m. at the Teamsters office, 4300 Boniface Parkway, to advise you of our goals and immediate plans. Representative Donnelly has also been invited to attend.

Labor and management are committed to join together to resolve these problems. We hope that you will join our effort with your support. Please call me as Co-Chair of the task force at 276-0147 if this meeting schedule is unacceptable or if you have any questions.

Sincerely,



Mary Pierce

MP/lks

KOYUKON DEVELOPMENT CORPORATION, INC.
BOX 102240
ANCHORAGE, ALASKA 99510
Phone: (907) 277-0787

MARK
Answer

July 22, 1987

Honorable Tim Kelly, Chairman
Senate Labor Committee
P. O. Box 21-0001
Anchorage, AK 99521

Dear Senator Kelly:

Koyukon Development Corporation is an organization representing sixteen Interior communities on issues relating to jobs and economic development.


We are in the process of expanding our jobs information program and have been concerned about implementation of last year's local hire statute requiring documentation of "zones of under-employment."

I am writing to inquire if your committee has monitored implementation of the law and what, if any, thoughts you have on the documentation process.

My initial talks with the Department of Labor suggests that documentation of unemployment and chronic under employment has not been intensified or retooled to assure designation of local hire preference areas will survive possible legal challenges.

I am interested in your views on this subject at your earliest convenience.

Sincerely,


Jeffrey R. Richardson
Executive Director

COILetter

NATIONAL
CONFERENCE OF INSURANCE LEGISLATORS

P.O. Box 217, Brookfield, WI 53005 Phone: (414) 782-6669

A national association of state legislators committed to insurance legislation and regulation in the public interest.

MARIL

July 6, 1987

COIL's September Seminar Program Is Shaping Up; Reservations are Coming In.

Programs on claim evaluations, data recovery, Washington issues, medical malpractice and auto issues are being finalized by COIL staff for the September 9-11 seminar in Newport, RI. Preceded by another Griffith Foundation orientation program on Sep. 8 and 9, reservations are rapidly approaching capacity.

Following the Griffith presentation on Wednesday morning, COIL committees meet on Wednesday afternoon, with the Executive Committee from 3:00 to 5:00 and a welcoming reception at 6:30. General sessions are from 9:00 to 2:00 on Thursday and 9:00 to 12:00 on Friday. A New England clambake is scheduled for Thursday night.

NAIC Frets Over McCarran, Solvency, Data Reporting, Exams

NAIC held one of its typically large and typically successful meetings in Chicago late last month. Meetings and conversation related often to issues of federal intervention and repeal of McCarran-Ferguson, although Commissioners showed concern over a position on repeal without alternatives. Health care issues attracted large crowds as the NAIC moved on model legislation in long-term health care, Medicare supplement and coordination of benefits. Continued improvement in NAIC data capture shows the organization moving toward quarterly reports.

In Washington, the House Gets Its Version of McCarran Repeal

A House bill repealing McCarran-Ferguson anti-trust exemptions for the insurance industry has been introduced by Rep. Don Edwards, CA, and six others. Whereas the Metzenbaum bill in the Senate provides a few safe harbors for joint activity, the House version is straight repeal, although Edwards says he would preserve state regulation and taxation. Among the sponsors are three powerful committee chairmen — Peter Rodino, NJ, Claude Pepper, FL, and John LaFalce, NY . . . Catastrophic illness insurance for Medicare beneficiaries has passed out of one House committee, with some differences over deductibles and prescription drugs still to be worked out. The bill does not include long-term care, which is the subject of an NAIC model and will be introduced in the Senate this summer by Sen. George Mitchell, ME . . . Uniform minimum standards for guaranty fund regulation have been urged by Rep. James J. Florio, NJ, who said his investigation of the Mission Insurance problem led to his concern over the viability of state guaranty funds.

Sen. Ernest Hollings, SC, chair of Senate Commerce, predicts a dual federal-state regulatory system in two or three years . . . Two Governors, Clinton of Arkansas and Thompson of Illinois, told the NAIC last week they favored continued state insurance regulation and opposed McCarran-Ferguson repeal. Clinton noted the Baldwin-United workout would never have been accomplished under strict anti-trust rules . . . A new unisex insurance rate bill has been introduced in the House with 90 co-sponsors and the Senate with ten.

Scorecards on Tort Reform Legislation Are Being Recorded

National Association of Independent Insurers (NAII) reports 2,822 bills dealing with the tort system have been introduced in 49 states in 1987 and that bills enacted in 22 states have produced 156 tort reform laws . . . General Accounting Office study on medical malpractice recommends a variety of state actions to change the tort system; also a more aggressive move against incompetent physicians . . . And the American Tort Reform Association, a business coalition, reports "dramatic gains" in civil justice reforms over the past year in 33 states.

Two New Studies On AIDS Support Voluntary Testing, Downplay Costs

SRI Research Center in Lincoln, NE, reports a national survey of heads of households shows 80 percent favor voluntary, confidential testing in an insurance application and 60 percent feel those exposed should pay a higher rate . . . A 600-page study of 2 million Blue Cross subscribers in the Philadelphia area shows AIDS patient costs, while rising on a per-patient basis, represent only a tiny fraction of the plan's total health care costs and that admissions for alcohol and drug abuse have risen much faster.

And In Other News of National Interest . . .

Insurance Committee for Arson Control, upon which COIL is represented, has joined by invitation the Federal Arson Task Force, which is preparing a report to Congress on the arson war . . . The June 10 earthquake in the Midwest shook up insurers as much as anyone, and an ad hoc industry group has increased its efforts to cope with what is considered an inevitable major happening. The subject will be on the COIL annual meeting program in Palm Springs.

In The States, Many Legislatures Are Now Winding Down

Connecticut, Florida, Nebraska, Vermont, Missouri, are some of the states that have recently adjourned, although special sessions always loom in the near distance . . . A couple of our recent reports in the welter of legislative proceedings cry for clarification. First, the St. Paul Fire & Marine denies it is withdrawing from **Florida** because of a court decision on tort reform, but simply because it can't get a profitable rate structure . . . In **Connecticut** we reported this year's bill on tort law repealed last year's denial of the joint and several liability doctrine. We are informed we were wrong, and although the situation is now complicated the bottom line is that joint and several has not been restored in the deep pocket sense but if a plaintiff cannot collect in a year or so from judgment a reallocation process is described.

A sweeping AIDS package has passed both Houses in **Illinois**, making testing mandatory for convicts and marriage licenses, and permitting quarantine for some who spread the disease. Tracing of sex partners would also be permitted . . . **New Jersey** independent agents and PIA have agreed to work jointly on state legislative issues, including banks in insurance, automobile insurance reform, tort reform and licensing changes . . . Flex rating for homeowners is provided in a **New York** bill recently passed.

Twelve tort reform measures were included in a legislative package passed by the **Kansas** legislature before adjourning . . . A **Nevada** Senate bill permits bank subsidiaries, affiliates or parent corporations to act as insurers and transact insurance . . . Flex rating has been proposed in **California** in an amendment to a licensing bill, but retroactive rates are not included . . . A **Rhode Island** bill that originally included major tort reform measures has been twice amended and has gone to the Governor as a bill regarding prejudgment interest . . . Prejudgment interest and collateral source information is permitted in an **Iowa** bill sent to the Governor in late May . . . Some modification of joint and several liability in a **Louisiana** bill passed both houses . . . Tort reform legislation is in conference committee in **Ohio**.

California department has ruled that advisory rates from national research firms such as ISO may no longer be used after Jan. 1. Insurers will be required to develop their own rates with advice from research firms only on actual loss costs . . . **Oregon** legislature has approved a House bill allowing financial institutions to be licensed as insurance agents to transact most lines including life and health . . . The state is not protected by a cap on medical malpractice in **California** when medical care is not provided a prisoner, according to an appeals court which restored a \$300,000 claim despite the \$250,000 medical cap.

A new product liability act has been passed in **New Jersey** providing a state-of-the-art defense for manufacturers and protecting food and drug producers from claims if the product has been federally approved . . . **Minnesota's** 1987 session defeated almost all of the aims of the business community, raising corporate taxes, increasing the minimum wage, passing a parental leave bill, ignoring tort reform, and adopting a controversial unemployment compensation reform bill.

A **Texas** omnibus insurance reform bill passed in special session has been signed by the Governor . . . **Alabama's** proposed cap of \$100,000 on punitive damages was amended up to \$250,000 in the closing hours of the session . . . **Montana** Supreme Court has invalidated a constitutional initiative capping noneconomic damages, due to faults in publication of the proposal . . . The **Illinois** aftermarket parts bill has been amended to favor industry positions permitting use of such parts . . . A **Missouri** bill prohibiting use of aftermarket parts died at adjournment . . . **Maine** has joined those states with compulsory auto insurance . . . A **Louisiana** House bill passed 96-0 providing authority to the Commissioner to order a pro-rate refund of a premium if excess profits are determined.

Florida's Academic Task Force created by last year's Tort Reform and Insurance Act has been told by its research team that liability insurance problems are primarily affordability problems and "the primary cause of the increase in insurance premiums over the long term is the increase in losses paid to claimants." . . . **Maryland** medical malpractice claims have dropped dramatically although the 50 percent drop may not be a trend, according to the Medical Mutual Liability Society . . . The Insurance Exchange of the Americas in Miami is coming under greater authority from the state Department and will probably see increased minimum capital requirements.

Nevada has okayed the licensing of state banks as insurers, and all thrift institutions have been amended into the bill . . . Parks and Resources department at **Michigan** State University is recommending that seesaws be removed from all city parks because of the danger of injury and liability . . . **Colorado** has revised its statutes to encourage captives and risk retention groups to locate in the state . . . **South Carolina** has a new auto insurance reform bill that requires rates as much as 25% higher for persons with bad driving records.

Ohio Department and Physicians Insurance Co. of Ohio have reached agreement over the adequacy of the medical insurers loss reserves. Capital will be immediately increased by \$4 million and premium surcharged will add another \$3 million over three years . . . **New York** appellate court has ruled insurance law in the state permits gender-based rating, in a suit brought against Metropolitan by the National Organization for Women . . . First quarter of 1987 was the best in four years for Canadian p/c companies.

A **Texas** Insurance Exchange would be created under legislation sent to the Governor . . . **Texas** Supreme Court has ruled that restaurant and bar owners can be held liable for damages caused by customers who become drunk if they know or should know it . . . In **Indiana** a court of appeals has ruled that a party host who served liquor to a man who later died in an auto accident cannot be held liable for the death.

In North Carolina civil justice reform in the medical malpractice field is not moving from committee. Also in North Carolina the Reinsurance Facility reported a \$22.6 million loss in the first three months of this year.

Workers Comp Continues To Cost More, Spawn New Legislation

Pennsylvania Governor has announced plans to overhaul the state's system to reduce a backlog of contested claims. He said the bureau has become one of the most embarrassing, inefficient workers comp systems in the U.S. under the former Governor . . . **Delaware** House bill to provide for a 150% payroll limitation has apparently died . . .

A state fund bill in **Louisiana** has been withdrawn at the request of the Governor, who had supported it . . . **Minnesota's** assigned risk plan rate level has been increased by 17.2% by the Commerce Commissioner . . . **Oklahoma** Rating Law has been amended and sent to conference committee.

One New Face Coming Up Among Commissioners

Vermont's Commissioner Thomas Menson has been named Secretary of Administration by the Governor, leaving the Banking and Insurance post open for now.

Meeting Plans and Meeting Dates Need Attention Soon

COIL's second 1987 seminar is in Newport, RI, on Sep. 9-11, with an advance orientation program by the Griffith Foundation on Sep. 8 and 9. Reservation/registration forms were sent some weeks ago, and travel plans should be sent this office as soon as possible.

The annual meeting in Palm Springs, CA, is Nov. 15-18 and should be marked on your calendar, although reservation forms have not yet been mailed.

MARK

May 15, 1987

Mrs. Al Bramstedt
Big Lake, Alaska 99652

Dear Mrs. Bramstedt:

This is in response to your request that your husband be moved to the top of the waiting list for admission to the Palmer Pioneers' Home. Your husband is currently number 7 on the Palmer Home waiting list and number 37 on the Anchorage Home waiting list.

Under the Alaska Administrative Code (2 AAC 41), a person who is a resident of the state, has been a resident for 15 years, is destitute and is physically disabled would have priority for admission to the Pioneers' Home over other applicants. Note that all four of these requirements must be met in order to qualify for priority status on the waiting lists.

There are fifty-three (53) applicants currently on the waiting list for nursing beds in the Anchorage Home. The top three on this waiting list are destitute applicants as described above.

In practice, the highest priority for admission to nursing care in the Homes goes to those current Home residents whose physical condition deteriorates to the point where they need nursing care.

In some instances, skilled nursing care has been provided in residential wings of Pioneers' Homes due to lack of vacant beds in nursing sections. This is a violation of the licensing regulations under which the Homes operate. We hope to avoid such violations in the future.

Over the past year, only four people were admitted to nursing care from Pioneers' Homes waiting lists. All the rest of the nursing care admissions were current residents of the Homes.

At this time, we have no vacant nursing care beds in any of the Pioneers' Homes.

We currently have residents in both the Anchorage Home and the Palmer Home who are in need of nursing care beds and are awaiting transfer.

Mrs. Al Dramstedt

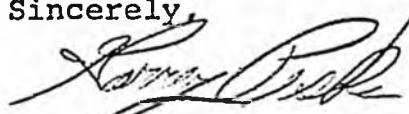
-2-

May 15, 1987

Our current policy is to review requests for admission to nursing care from a waiting list on a case-by-case basis. If we have a vacant nursing bed and there are no current residents waiting for transfer to nursing care, we will allow admission directly to nursing care.

Please feel free to contact me if you have further questions.

Sincerely,



Garrey Peska
Commissioner

GP/lb

MARK

WORKERS' COMPENSATION RATE HISTORY
CLASSIFICATIONS WITH MORE THAN
\$10,000,000 FOR PERIOD 4/1/82 - 3/31/85
BY INDUSTRY GROUP

Prepared by: ALASKA DIVISION OF INSURANCE
November 25, 1987

MANUFACTURING CLASSIFICATIONS +10.5%
Rate Range from -14.0% to +36.0%

Code Classification Credibility	Payroll (millions)	Rates per \$100 Payroll		
		1988 Change	1987 Change	1986
2003 Bakeries 18 32 70	16.8	7.40 +33.3%	5.55 +26.7%	4.38
2104 Seafood Processors 92 100 100	176.7	8.33 -4.3%	8.70 -12.0%	9.88
2111 Canneries 14 29 69	11.7	7.79 +16.9%	6.66 +25.4%	5.31
2802 Carpentry Shop Only 25 43 100	19.6	10.49 +25.2%	8.38 +27.0%	6.60
3632 Machine Shops 19 31 86	14.3	8.52 +11.0%	7.67 +27.0%	6.04
4207 Pulp Mfg Chemical Process 9 15 65	11.0	3.82 +35.9%	2.81 -7.6%	3.04
4299 Printing 12 23 52	16.7	4.29 +27.6	3.36 +21.3%	2.77
4304 Newspaper Publishing 16 31 65	19.2	5.74 +31.9%	4.35 +11.2%	3.91
4740 Oil Refining Petroleum 24 30 81	17.3	6.15 -14.0%	7.15 0.0%	7.15

CONTRACTING CLASSIFICATIONS +29.0%
Rate Range from +4.0% to +54.0%

Code Classification Credibility	Payroll (millions)	Rates per \$100 Payroll		
		1986 Change	1987 Change	1986
3365 Welding or Cutting NOC 41 64 100	28.6	11.20 +15.3%	9.71 +17.7%	8.25
3719 Oil Still Erection or Repair 36 80 100	23.3	15.53 +38.3%	11.95 +7.3%	11.14
3724 Millwright 71 47 100	38.3	21.77 +54.0%	14.14 +45.9%	9.67
5022 Masonry NOC 33 44 77	14.0	14.16 +8.3%	13.07 +12.8%	11.59
5057 Iron or Steel Erection or Repair 68 53 100	13.8	51.68 +46.7%	35.22 +42.5%	24.71
5183 Plumbing NOC 100 100 100	198.9	11.73 +28.4%	9.13 +21.6%	7.51
5190 Electrical Wiring in Buildings 100 100 100	241.2	8.73 +10.3	7.91 +37.6%	5.75
5213 Concrete Construction NOC 100 100 100	81.2	23.98 +29.5%	18.51 +37.1%	13.50
5221 Concrete Floor Driveways Sidewalks 31 50 84	24.2	9.41 +20.0%	7.84 +16.8%	6.71
5403 Carpentry NOC 100 100 100	260.6	17.51 +28.9%	13.58 +7.3%	12.66
5445 Wallboard Installation in Buildings 45 67 100	31.6	16.84 +38.1%	12.19 +41.6%	8.61
5474 Painting or Paper Hanging NOC 45 63 100	32.9	10.66 +4.0%	10.25 +13.9%	9.00
5479 Insulation Work 30 46 92	11.4	22.45 +38.6%	16.19 +30.3%	12.42
5506 Street or Road Paving Repaving 59 86 100	32.9	22.67 +39.6%	16.23 -4.0%	16.90

CONTRACTING CLASSIFICATIONS Continued

5507 Street or Road Construction 72 75 100	82.1	10.50 +54.0%	6.82 -4.0%	7.10
5538 Sheet Metal Work Erection NOC 75 96 100	64.9	17.44 +47.5	11.82 +46.0%	8.10
5551 Roofing All Kinds 61 64 100	18.7	36.21 +11.8%	32.36 +46.0%	22.17
5606 Contractors Executive Supervisors 66 92 100	102.9	6.91 +30.3%	5.30 +22.7%	4.32
5646 Carpentry Const Private Residence 100 100 100	100.8	17.66 +12.6%	15.67 +44.8%	10.82
5651 Carpentry Const Priv Res 3 Story 54 71 100	31.6	18.80 +30.4	14.41 +4.0%	13.85
6204 Drilling NOC 59 75 100	19.0	38.50 +53.1%	25.14 +9.9%	22.88
6217 Excavation NOC 100 100 100	150.1	12.67 +23.2%	10.28 +26.8%	8.11
6306 Sewer Construction 68 61 100	26.5	19.11 +4.0%	18.37 +14.4%	16.06
6319 Gas Mains or Connections Const 37 53 86	26.5	8.72 +4.0	8.38 +3.9%	8.72
6325 Conduit Construction 45 62 100	35.1	10.08 +19.8%	8.41 +4.6%	8.04
7538 Elec Light or Power Line Const 72 69 100	26.9	31.60 +48.6%	21.26 +27.6%	16.66
8227 Contractors Permanent Yard 83 95 100	100.3	11.67 +46.7%	7.95 -4.0%	8.28

OIL AND GAS CLASSIFICATIONS +43.0%
Rate Range from +18.0% to +68.0%

Code Classification Credibility	Payroll (millions)	Rates per \$100 Payroll		
		1988 Change	1987 Change	1986
1320 Oil or Gas Lease Operators 100 100 100	286.7	7.17 +55.5%	4.61 -5.3%	4.87
6206 Oil or Gas Well Cementing 26 32 70	17.3	9.62 +18.0%	8.15 +6.9%	7.62
6216 Oil or Gas Lease Work by Contractor 100 100 100	133.8	24.19 +53.0%	15.81 +33.0%	11.89
6233 Oil or Gas Pipeline Construction 100 100 100	123.4	16.19 +68.0%	9.64 +19.5%	8.07
6235 Oil or Gas Wells Drilling/Redrilling 100 100 100	99.3	30.26 +18.0%	25.64 -6.1%	27.28
6237 Oil or Gas Wells Logging/Survey 36 34 88	20.5	15.15 +46.8%	10.32 +33.0%	7.76
7515 Oil or Gas Pipeline Operation 35 29 81	27.6	10.83 +51.8%	7.13 -4.8%	7.49

ALL OTHER CLASSIFICATIONS †17.6%
Rate Range from -7.0% to †43.0%

Code Classification Credibility	Payroll (millions)	Rates per \$100 Payroll		
		1988 Change	1987 Change	1986
1005 Coal Mining Surface 25 25 52	17.4	7.91 †6.8%	7.40 -9.8%	8.20
1165 Mining NOC Surface 34 40 100	24.0	9.27 †3.9%	8.92 †0.7%	8.86
4000 Sand or Gravel Digging 32 41 78	25.0	8.57 †22.0%	7.02 -7.9%	7.62
4361 Photographers 7 11 25	14.8	2.09 †33.1%	1.57 †13.8%	1.38
4511 Analytical Chemists 16 19 56	24.5	3.87 †28.5%	3.01 †33.2%	2.26
5191 Office Machine/Appliance Install. 18 25 69	48.1	2.21 †11.6%	1.98 †15.8%	1.71
7219 Truckmen NOC 100 100 100	87.4	20.60 †18.3%	17.41 †1.8%	17.10
7222 Truckmen Oil Field Equipment 65 53 100	21.5	20.60 †18.3%	17.41 †1.8%	17.10
7380 Drivers, Chauffeurs, & Helpers 42 54 100	60.4	10.12 †43.0%	7.08 †38.8%	5.10
7382 Bus or Taxicab Companies 34 30 100	19.0	10.87 -7.0%	11.68 †38.9%	8.41
7390 Beer or Ale Dealers 24 42 96	12.9	17.58 †43.0%	12.30 †39.0%	8.85
7405 Aircraft Scheduled Flying Crew 26 22 53	25.9	3.97 -7.0%	4.26 -42.1%	7.36
7414 Aircraft Ground Crew 44 95 100	118.7	4.52 †12.7%	4.01 †3.6%	3.87
7421 Aircraft Transportation of Employees 34 29 156	13.4	10.86 -7.0%	11.67 -11.0%	13.11

ALL OTHER CLASSIFICATIONS Continued

7422 Aircraft Air Taxi Flying Crew 61 44 100	35.4	17.60	18.92	16.31	-7.0%	+16.0%
7431 Aircraft Commuter Flying Crew 26 30 62	15.2	11.78	8.24	14.23	+43.0%	-42.1%
7502 Natural Gas Companies 21 23 80	18.1	7.67	6.47	4.66	+18.5	+38.8%
7520 Water Works Operation 12 18 38	11.4	5.89	4.12	3.96	+43.0%	+4.0%
7539 Elec Light & Power Co NOC 22 26 73	31.4	5.42	3.88	3.61	+39.6%	+7.4%
7540 Elec Light & Power Coops Rural 31 37 83	35.1	5.54	4.90	4.31	+13.0%	+16.4%
7580 Sewerage Disposal Plant Operation 13 23 43	15.8	4.75	3.69	3.58	+28.7	+3.0%
7600 Telephone & Telegraph Cos. 31 49 100	62.0	3.80	3.24	2.51	+17.2%	+29.1%
7605 Alarm Systems Install & Repair 10 19 54	13.5	4.41	3.57	2.72	+23.5%	+31.2%
7610 Radio & Television Stations 76 70 100	139.8	5.30	4.33	3.12	+22.4%	+38.8%
7704 Firemen 21 31 81	19.1	7.91	6.44	6.10	+22.8	+5.6%
7720 Policemen 74 74 100	90.6	6.60	6.43	6.13	+2.6%	+4.9%
8006 Grocery Stores Retail No Fresh Meats 33 45 100	31.8	7.52	8.08	7.73	-7.0%	+4.5%
8008 Clothing or Dry Goods Stores 16 31 73	68.3	1.67	1.41	1.40	+18.4%	+0.7%
8010 Hardware Stores 26 39 100	61.5	4.25	3.71	2.67	+14.5%	+39.0%
8013 Jewelry Stores 6 8 17	20.5	0.80	0.76	0.72	+5.2%	+5.6%

ALL OTHER CLASSIFICATION, Continued

Code Classification Credibility	Payroll (millions)	Rates per \$100 Payroll		
		1988 Change	1987 Change	1986
8017 Store Risks NOC Retail 35 72 100	170.6	3.15 +32.3%	2.38 +3.5%	2.30
8018 Store Risks Wholesale 21 44 82	31.6	5.54 +32.8%	4.17 +8.0%	3.86
8033 Stores Meat Combined Grocery Retail 39 61 100	103.7	3.39 +4.6	3.24 +15.7%	2.80
8039 Department Stores Retail 12 26 60	30.0	2.55 +9.9%	2.32 +11.0%	2.09
8044 Furniture Stores 16 29 65	26.1	3.72 +10.7%	3.36 +6.0%	3.17
8046 Auto Accessories Stores Retail NOC 8 12 34	11.4	3.66 +26.6%	2.89 +26.2%	2.29
8058 Lumber Yard Store Employees 13 26 55	23.1	4.21 +42.7%	2.95 +24.4%	2.37
8107 Machinery Dealers NOC Store & Yard 46 58 100	54.4	6.93 +15.3%	6.01 +23.4%	4.87
8232 Lumber Yards All Other Employees 66 96 100	51.4	12.87 -4.9%	13.52 +39.0%	9.73
8292 Storage Warehouses General Merch. 31 58 87	35.0	5.36 -4.8%	5.63 -11.0%	6.32
8293 Storage Warehouses Furniture 46 72 100	22.8	18.64 +16.1	16.05 +19.1%	13.48
8530 Gasoline or Oil Dealers 34 39 100	33.0	9.59 +43.0%	6.71 +39.0%	4.83
8385 Bus or Taxicab Garage 15 24 49	12.7	6.21 +15.8%	5.36 +9.2%	4.91
8387 (*8380) Auto Accessories Sercv Statns 36 62 100	54.9	8.33 +32.0%	5.48 +8.1%	5.07

* Note: Codes 8387 & 8391 Discontinued. New Class Code is 8380.

ALL OTHER CLASSIFICATIONS Continued

Code Classification Credibility	Payroll (millions)	Rates per \$100 Payroll		
		1988 Change	1987 Change	1986
8391 (*8380) Auto Garages & Repair Shops 100 100 100	152.4	8.33 +2.3%	8.14 +36.6%	5.96
8393 Auto Body Repairing 16 23 60	13.6	7.41 +24.5%	5.95 +24.7%	4.77
8601 Engineers or Architects Consulting 50 77 100	198.8	2.92 +24.2	2.35 -7.1%	2.53
8606 Geophysical Exploration Seismic 32 53 100	33.3	9.22 +23.5%	7.46 +37.1%	5.44
8607 Geophysical Exploration NOC 24 27 65	21.7	6.33 +18.0%	5.36 +35.4%	3.96
8742 Salesmen, Outside Messengers 60 73 100	594.0	1.11 +27.5%	0.87 +1.1%	0.86
8748 Automobile Salesmen 13 16 40	47.1	1.57 +43.0%	1.10 -1.8%	1.12
8755 Labor Unions 13 11 29	27.5	2.09 +39.3%	1.50 -5.7%	1.59
8803 Travelling Auditors, Accountants 5 7 17	43.4	0.47 +42.4%	0.33 +13.8%	0.29
8810 Clerical Office Employees 100 100 100	2330.0	0.68 0.0%	0.68 -10.6%	0.76
8820 Attorney 14 19 46	143.2	0.54 +28.5	0.42 -10.6%	0.47
8829 Nursing Homes 26 46 100	31.1	8.57 +9.1%	7.85 +38.9%	5.65
8832 Physicians 16 27 74	191.2	0.47 -6.0%	0.50 +4.2%	0.48
8833 Hospitals Professionals 42 58 100	224.5	2.25 +42.4%	1.58 +13.7%	1.39

* Note: Codes 8387 & 8391 Discontinued. New Class Code is 8380.

ALL OTHER CLASSIFICATIONS Continued

Code Classification Credibility	Payroll (millions)	Rates per \$100 Payroll		
		1988 Change	1987 Change	1986
8835 Public Health Nursing Assns 20 36 66	39.1	3.24 +16.5%	2.78 +0.7%	2.76
8868 Colleges, Schools, Professional 36 66 100	611.9	0.66 +1.5%	0.65 0.0%	0.65
8901 Telephone or Telegraph, Office Empl 13 14 40	45.6	1.11 +2.7	1.08 +33.3%	0.81
9014 Buildings Operation by Contractor 30 54 100	48.9	6.00 +42.8%	4.20 +13.5%	3.70
9015 Buildings Operation by Owner/Lessee 36 67 100	49.5	9.78 +43.0%	6.84 +34.4%	5.09
9033 Housing Authorities 12 24 48	17.2	4.28 +22.6%	3.49 +21.1%	2.88
9040 Hospital, All Other 38 61 100	44.6	11.34 +32.0%	8.59 +37.7%	6.24
9052 Hotels 44 69 100	86.3	6.06 +18.3%	5.12 +14.3%	4.48
9058 Hotel Restaurants 39 72 100	84.6	6.82 +43.0%	4.77 +23.9%	3.85
9061 Clubs NOC 10 20 55	17.8	4.14 +28.7%	3.21 +14.3%	2.81
9063 YMCA YWCA 6 15 35	13.1	2.77 +19.3	2.32 +9.4%	2.12
9078 Commissary 88 100 100	89.4	12.40 +31.0%	9.46 +38.9%	6.81
9079 Restaurants 64 100 100	317.6	4.82 +34.6%	3.58 +25.6%	2.85
9101 Colleges or Schools All Other 39 64 100	93.6	3.62 +6.7%	3.39 +11.5%	3.04

ALL OTHER CLASSIFICATIONS Continued

Code Classification Credibility	Payroll (millions)	Rates per \$100 Payroll		
		1988 Change	1987 Change	1986
9402 Street Cleaning 20 27 70	13.4	8.80 +12.1%	7.85 +13.3%	6.93
9403 Garbage Collectors 28 38 91	16.5	9.60 -4.0%	9.99 +9.2%	9.15
9410 Municipal or State Employees 20 41 100	21.3	8.03 +10.0%	7.30 +36.2%	5.36
9519 Electrical Appliance Install/Repair 15 22 45	17.1	4.29 +13.1%	3.79 +14.5%	3.31
9586 Barber Shops, Beauty Parlors 4 11 18	19.1	1.04 +40.5%	0.74 +5.7%	0.70

THE ALASKA NEWS
TIMES 12/1/87
Don't blame the workers

Dear Editor:

The Nov. 27 newspaper had two articles concerning workers' comp problems written by your reporter Ms. Rosen. I take exception to the manner in which this information was reported upon. The statement of some individuals receiving comp benefits of \$1,000 per week is ridiculous.

I called the workers' comp office, and in the course of a few minutes, I was advised by them that for a single individual without dependents to receive a comp check of \$1,000 per week he would have to make a weekly gross amount of \$2,052 or \$8,208 per month for the past two years. How many individuals do you know that can qualify for this amount of compensation, even in the past good times of our booming state economy?

The rising medical costs as quoted by your reporter is not the area of concern either. The insurance carriers create as much havoc in the life of the injured worker as they can. The response to this is massive legal problems and, of course, high legal fees. Any increase in premiums by the insurance companies should be prevented until such time as they correct their own management problems and stop their program of spending dollars to prevent an injured worker from receiving pennies.

David L. Rogers
2148 Sunrise Drive

years, and how is proving wrong

PENINSULA CHARITON 12/4/87

More about workers' comp

In the rush to meet deadlines, we do not always achieve the clarity we aim for, and in this space on Tuesday some of the aspects of the workers' compensation system were glossed over in a way that might have left misimpressions.

This occurred primarily in the characterization of employers' workers' compensation fees as a tax. They are a "tax" only in the sense that the fees are required, but they are not a tax in the strictest sense because the funds do not accrue to the government but to the insurance companies that provide the compensation coverage. Indeed, in failing to mention the insurance carriers, Tuesday's editorial left out one of the important parties that should be included in the reform-minded reviews that need to be done.

Rate adjustments such as the ones due next month are needed now and then to assure that the insurance companies can write enough policies to provide adequate coverage, but the truer problem is that costs are being run up too high - for insurers and for employers - by an overly generous system.

The system was not created to pay disabled workers up to \$55,000 a year, as Alaska's system does. The idea was to keep people on their feet after job-related disabilities.

The system now rewards people for continuing not to work and has thus become counter productive.

**Workers' Compensation Insurance
January 1, 1988 Rate Change
Soldolna Hearing, November 27, 1987**

Good afternoon. My name is Don Koch. I am a Special Deputy for the Alaska Division of Insurance. I head the market surveillance section within the Division, which is responsible for rates, forms, market availability, market contact, market conduct examinations, and market access. In addition to general oversight of the market conduct section, I am the person who deals with the Divisions responsibility in the area of workers' compensation insurance.

As most of you know, the Division has received a filing from the National Council on Compensation Insurance which provides for a substantial increase in workers compensation insurance rates, and after review, has approved the filing for use as January 1, 1988.

The the National Council on Compensation Insurance is a national rating organization licensed by the State of Alaska. The members and subscribers of the the National Council on Compensation Insurance are insurance companies writing worker's compensation insurance in some 32 states. The National Council on Compensation Insurance does statistical compilation of data, including premium, payroll, loss and expense data, on behalf of its member and subscriber insurance companies. It makes rate and policy form filings with the State of Alaska on behalf of its member and subscriber insurers.

On October 16, 1987, the the National Council on Compensation Insurance filed a rate change for worker's compensation insurance on behalf of its member and subscriber companies to be effective January 1, 1988 on new and renewal policies. The overall statewide premium level increase resulting from implementation of that filing is 25.1%. The components of the increase are:

- increase due to experience..... +22.1%
- increase due to change in
trending..... +01.3%
- reduction to reflect anticipated
decrease in the state average
weekly wage -00.01%
- increase for tax to reflect
Guaranty Fund Assessments..... -01.1%

The overall average of 25.1% is further broken down into four (4) major industry groupings, each with a different impact from the filing reflecting that groups' contribution to the loss level. The industry groups are manufacturing, contracting, oil & gas, and all other. Within the groups, individual classifications can move an additional ±25% from the group overall indication, further reflecting the particular experience of the individual classification. The four groups, the indicated rate change by group, and the range of rate movement for classifications in each group are:

<u>GROUP</u>	<u>IMPACT</u>	<u>RANGE of IMPACT</u>
Manufacturing	+10.5%	-14.0% to +36.0%
Contracting	+29.0%	+4.0% to +54.0%
Oil & Gas	+43.0%	+18.0% to +68.0%
All Other	+17.6%	-7.0% to +43.0%

These impacts are distributed to individual classifications. There are a total of 543 classifications used in the National Council on Compensation Insurance classification manual. Of the 543 classifications, 338 classifications had some payroll for the period used to determine classification relativity in Alaska. Of that 338 classifications, about 120 classifications had more than \$10 million of payroll over a three year

period in Alaska. The total numbers of classifications in the manual by industry group are:

<u>GROUP</u>	<u>TOTAL NCCI CLASSES</u>	<u>SOME ALASKA PAYROLL</u>	<u>+10,000,000 ALASKA PAYROLL</u>
Manufactng	294.	105.	9
Contracting	67.	64.	27
Oil & Gas	11.	11.	7
All Other	171.	158.	77

The current filing is not unusual in terms of the review process that led to its filing with the Division of Insurance. Much of the methodology utilized tracks with filing methods that have been used in the past in this state and found to be acceptable in past reviews. It is, in a sense, routine, though its impact is not.

Since 1974, Market Surveillance Section of the Division of Insurance, has closely monitored workers' compensation insurance experience of insurers writing that line of insurance in Alaska. The purpose was to measure competition and to develop an independent base with which to gauge the proposals of the National Council on Compensation Insurance. By applying Division of Insurance devised formulas and tests to this base information, which is limited in its sophistication, the Division of Insurance has generally been able to predict rate changes within two to five percent of the actual proposal and to do so about six months before a filing is proposed. In other words, it gets us in the ball park concerning what to expect.

Since this approach does lack sophistication and is not accurate to the degree desirable for ratemaking purposes, the results of these tests have not been widely publicized. One concern is that the tests done by the

Division of Insurance should not be available for potential use by insurers as part of the support for rate change proposals.

Utilizing this process, I noted in June 1986 that there was a likelihood of a significant filing to be effective on January 1, 1987. At that time, I concluded that a 21.5% overall premium level increase would be needed and that due to data anomalies the true need was probably closer to 30%. The data anomalies referred to, are the impacts of reserve strengthening attributable to prior years.

Using a similar process this year, I concluded that a filing in the range of 33% would be needed for 1988. I also noted that certain tests applied by insurance commissioners across the country suggested that the majority of insurance companies writing worker's compensation insurance have substantial reserve deficiencies based on the latest filings of annual reports. This, if anything tends to suggest that the need is even greater than our tests indicate that it is. Again there are data anomalies that, given an adequate data base and sufficient sophistication, are subject to fine tuning and development of a believable rate indication, albeit unpopular.

Typically, the Division of Insurance looks at losses in relation to the premium accompanying the losses. Recently, I had occasion to look at losses isolated from the premium and I had a bit of a shock.

YEAR	LOSSES
1983	\$70,678,000
1984	\$89,789,000
1985	\$124,447,000
1986	\$150,294,000

That is more than doubled in a four year period and with a decreasing payroll base to boot.

When the Division of Insurance receives an insurance rate filing from an insurance company or a rating organization such as the National Council on Compensation Insurance, it does so under standards found in AS 21.39.030 which provide that the rates shall not be excessive, shall not be inadequate, and shall not be unfairly discriminatory.

The documentation provided with the filing supports the contention that the current rate structure is inadequate. Independent data developed by the Division of Insurance suggests that the proposed level requested does meet the statutory tests.

The standards set forth in the rate law (AS 21.39) do not provide, nor should it provide, for the application of political or economic considerations when reviewing a rate filing. The law was specifically designed to avoid just that occurrence. Viewing it from these considerations, this filing could not have come at a worse time. The economy has been devastated by factors with which you are all familiar. These place pressures on such a filing which while recognized, can not be considered under the law.

The Division of Insurance does not influence the benefits available under the Alaska Workers' Compensation Act. Those are established by the legislature and administered by the Alaska Workers' Compensation Board. The Alaska Worker's Compensation Board generally becomes involved in a claim only with the specific request of the claimant, but the Division of Insurance can not. There is one additional party regularly appearing on the scene, again via the claimant, and that is the court system.

The Division of Insurance does not deal with individual consumer complaints involving workers' compensation insurance. These are the jurisdiction of the Alaska Worker's Compensation Board. The Alaska Worker's Compensation Board is primarily an adjudicatory body, not a regulatory one. The Division of Insurance on the other hand is primarily a regulatory body. We can and do become involved in unfair trade practices, and we are currently are in the regulation adoption process for claim practices.

When the Legislature addresses an issue relating to workers' compensation insurance, the role of the Division of Insurance is to attempt, through the National Council on Compensation Insurance and whatever other resources to which we have access, to determine the price impact of the proposed legislation. The Division of Insurance does not and should not take an advocacy posture as respects changes to the benefit structure in the Alaska Workers' Compensation Act.

The Division of Insurance does however have a strong role in the efficiency of operation of the rating systems utilized by insurers writing workers' compensation insurance. It has a strong interest in factors that affect the data base from which rates are derived. It is concerned with issues that can influence the accuracy of the data base underlying the rate structure. Because of these interests and concerns, the Division of Insurance wants to:

- assure the proper reporting and gathering of payroll data;
- assure the proper and equitable application of the filed classification system; and,
- assure the proper conduct of persons writing coverage for an employers workers' compensation liability.

During the public hearing held last year, witnesses testified to some of the frustrations experienced. In many cases, the Division of Insurance does not have jurisdiction to address the kinds of problem described. Numerous issues were discussed in the hearing and more in correspondence and in telephonic communications. In many cases, the extent of recognition of these problems should be the stereotypical comment, "it's not my job." While to a great extent that may be true of the issues witnesses have brought to us in the hearing last year, we did commit to at least describe the issues for the benefit of those who may be in a position to address them or to dismiss them. This was done via the Order issued last December following the hearing. The issues brought to our attention include:

- questions of jurisdiction;
- trying to determine whether an individual is an independent contractor or will be held to be an employee;
- trying to have something done about a claimant who is known to the employer to be malingering or abusing the system;
- dramatic change in cost with short notice;
- dealing with fraud;
- rate disparity between Alaska and other jurisdictions;
- subsidy within classifications;
- overpopulation of the assigned risk plan;
- the perception that board or court decisions are too liberal;
- the increasing cost of medical care;
- the growth of the legal expenses in the system;
- the problems with the rehabilitation portion of the act;
- perception that the act is not enforced; and
- more.

When a rate increase such as this goes into effect, it applies to new and renewal business as has already been noted. This fact itself offers both

gain for some and relief for others depending on when the particular employers' policy expires and whether the change is an increase or a decrease. It impacts the cost effectiveness of an employer depending at what point he is bidding a job and whether his workers' compensation insurance costs for the period bid are known when bidding. With that in mind, the current filing is the most notice that has ever been seen for a January 1 rate filing. In the future, this procedure will be used for experience based filings. Employers will have 60 days advance notice that a change is eminent. That is not a lot, but it is a significant advance over past practice.

The Division is now attempting to identify areas of difficulty, with the aim to try to alleviate them. For example:

We will shortly be placing some new requirements on insurance companies to inform insureds about changes in the system which they intend to apply, and to do so up front rather than at audit.

The Division has available a number of publications printed by the National Council on Compensation Insurance which help to explain parts of the rating system. We routinely send these to persons requesting them.

We expect to have a consumer brochure ready for employers that will also provide what we hope will be helpful information.

We will be imposing revised rules concerning eligibility in the assigned risk pool when nonpayment of premium due is because of a contested audit.

We are now attempting to fill two additional positions which will be involved in market conduct examinations, thus giving us the ability to

physically review the files of an insurance company for compliance with Alaska law.

Alaska State Legislature

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MEMBER
Community and Regional
Affairs

Special Committee
on Telecommunications
Finance Sub-Committee
for Labor

Anchorage Caucus,
House Chair

Representative Virginia M. Collins

October 1, 1987

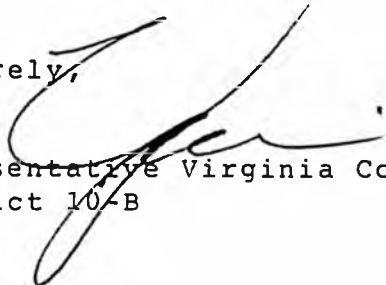
Senator Tim Kelly
3111 C Street, Suite 545
Anchorage, Alaska 99503

Dear Senator Kelly:

Enclosed please find the article, "Something More Important Than Money--Vocational Rehabilitation in Workers' Compensation Cases." I believe you will find this of interest. Should I come across other articles that I think would be helpful, I will forward them to you.

I would like the opportunity to meet you for lunch sometime before November 12th if your schedule permits.

Sincerely,


Representative Virginia Collins
District 10-B

enc.

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SOMETHING MORE IMPORTANT THAN MONEY—VOCATIONAL REHABILITATION IN WORKERS' COMPENSATION CASES

CHANCY CROFT*

This article is an extensive survey of and commentary on the law of vocational rehabilitation under the workers' compensation statutes and case law of Alaska, the other forty-nine states, Washington, D.C., the veteran's vocational rehabilitation programs, the Federal Employees' Compensation for Work Injuries Act, and the Longshoremen's and Harbor Workers' Compensation Act. Mr. Croft first discusses the history, purposes, and philosophies of vocational rehabilitation. He then thoroughly discusses the types and varieties of vocational rehabilitation benefits, with special emphasis on disability compensation during vocational rehabilitation. An enlightening comparison of seven different vocational rehabilitation schemes follows this analysis. Mr. Croft then concludes with some observations on and suggestions for improving vocational rehabilitation. The Appendices contain an exhaustive summary of important vocational rehabilitation features in fifty-three jurisdictions.

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* Attorney-at-Law, Anchorage, Alaska; B.A., University of Texas, 1959; LL.B., University of Texas, 1961.

The author would like to thank Marie Sansone for her research assistance.

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I. INTRODUCTION

Vocational rehabilitation — “the restoration of the handicapped [to] the fullest physical, mental, social, vocational, and economic usefulness of which they are capable”¹— has become a major goal of workers’ compensation.² As Professor Arthur Larson noted authoritatively on workers’ compensation, recognizes, “It is probably no exaggeration to say that in this field [vocational rehabilitation] lies the greatest single opportunity for significant improvement in the benefits afforded by the workmen’s compensation system.”³

Workers’ compensation statutes typically provide disabled workers with an evaluation for potential vocational rehabilitation,⁴ actual rehabilitation services,⁵ maintenance,⁶ and travel allowances.⁷ The worker receives compensation for loss of ability to earn wages at either temporary or permanent disability rates.⁸ To encourage employers to hire the handicapped, some statutes provide for payment of disabled

1. Comment, *Vocational Rehabilitation in the Workers’ Compensation System*, 33 ARK. L. REV. 723, 742-43 (1980) (quoting The National Council on Rehabilitation).

Proposed Alaska Workers’ Compensation Board regulations define vocational rehabilitation as “a program of services, not limited to medical services, designed to restore an injured or disabled employee to gainful employment.” ALASKA ADMIN. CODE tit. 8, § 47.060(4) (Proposed Draft), reprinted in Z. JACKSON, PRESENTATION OF PRELIMINARY FINDINGS OF A COMPREHENSIVE STUDY OF VOCATIONAL REHABILITATION IN THE ALASKA WORKERS’ COMPENSATION PROGRAM 4 app. (1987).

2. Alaska’s workers’ compensation program is codified at ALASKA STAT. §§ 23.30.005-.270 (1984 & Supp. 1985).

3. 2 A. LARSON, WORKMEN’S COMPENSATION LAW § 61.25, at 10-784 (1983). See Z. JACKSON, *supra* note 1, at 1-2.

4. See ALASKA STAT. § 23.30.041(e) (1984); see also *Aranda v. D.A. & S. Oil Well Servicing, Inc.*, 98 N.M. 217, 224, 647 P.2d 419, 424-26 (Cl. App. 1982) (upholding district court order allowing injured worker to submit to vocational evaluation at cost and expense of employer provided employee requests evaluation and despite fact that employee may later refuse to undertake rehabilitation).

5. Vocational rehabilitation services may include vocational evaluation, counseling, retraining, on-the-job training, and job placement assistance. ALASKA ADMIN. CODE tit. 8, § 47.060(6) (Proposed Draft), reprinted in Z. JACKSON, *supra* note 1, at 4 app.

6. Maintenance typically refers to supplemental compensation received during rehabilitation. For example, former ALASKA STAT. § 23.30.040(e) (repealed 1982) provided for supplemental payments during rehabilitation.

7. Travel allowances typically include the reasonable cost of board, lodging, and transportation when rehabilitation temporarily requires the worker to leave his customary residence. See, e.g., ALASKA STAT. § 23.30.041(g) (1984); *Ryan v. NAPA*, 268 Ark. 1065, 1067, 598 S.W.2d 443, 445-46 (Cl. App. 1980).

8. The availability of compensation during vocational rehabilitation varies from state to state, depending on statutory provisions and case law, and often turns on whether the disabled worker has reached the point of medical stability. See, e.g., *Big-nell v. Wise Mechanical Contractors*, 651 P.2d 1163, 1167 (Alaska 1982); *Cleator v. Indus. Comm’n*, 129 Ariz. 179, 181, 629 P.2d 1015, 1017 (Cl. App. 1981). For a more elaborate discussion of these issues, see *infra* notes 95-175 and accompanying text.

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workers' rehabilitation benefits during on-the-job training.⁹ Recently, a few states have adopted innovative and far-reaching changes in the availability of these benefits.¹⁰

This article explores the types of benefits available throughout the United States to workers eligible for vocational rehabilitation by comparing and discussing the workers' compensation plans of Alaska and the other states, the Federal Employee's Compensation for Work Injuries Act ("FECWIA"),¹¹ and the Longshoremen's and Harbor Workers' Compensation Act ("LHWCA").¹² The article also addresses the financing of vocational rehabilitation and the general benefits to society resulting from recent trends in the vocational aspects of workers' compensation laws. The article concludes by recommending ways to improve vocational rehabilitation systems.

II. WORKERS' COMPENSATION VOCATIONAL REHABILITATION

A. The Meaning of Disability

In all fifty states, statutes govern the award of benefits to workers who, in the course and scope of their employment, suffer injury or illness resulting in disability.¹³ Definitions of disability vary from statute to statute. For example, the Alaska Workers' Compensation Act¹⁴ defines "disability" as the "incapacity because of injury to earn the wages which the employee was receiving at the time of injury in the same or any other employment."¹⁵

The concept of disability includes two separate but related components. The first of the components is medical or physical impairment as evidenced by serious disfigurement, loss of parts of the body, or by medical testimony that the injured employee cannot perform the exertions required by his former job.¹⁶ The second component is wage loss, the inability to earn "suitable wages," defined as the wages that

9. See, e.g., ALASKA STAT. § 23.30.045(c) (1984) (during on-the-job training, rehabilitation benefits paid from a special state fund); see also *Dresser Indus. Inc./Atlas Div. v. Hiestand*, 702 P.2d 244, 246 (Alaska 1985).

10. See, e.g., *Bignell*, 651 P.2d at 1168; *Int'l Paper Co. v. Indus. Comm'n*, 99 Ill. 2d 458, 459 N.E.2d 1353 (1984); *Nat'l Tea Co. v. Indus. Comm'n*, 97 Ill. 2d 424, 454 N.E.2d 672 (1983); *Hunter Corp. v. Indus. Comm'n*, 86 Ill. 2d 489, 427 N.E.2d 1247 (1981); ALASKA STAT. § 23.30.041 (1984); MINN. STAT. ANN. § 176.102 (West Supp. 1985); Walsh, *Employees' Claims for Concurrent Payment of Temporary Disability and Retraining Benefits*, 6 WM. MITCHELL L. REV. 731 (1980).

11. 5 U.S.C. §§ 8101-49 (1982) and 18 U.S.C. §§ 292, 1920-21 (1982).

12. 33 U.S.C. §§ 901-45, 947-50 (1978 & Supp. 1985).

13. See generally U.S. CHAMBER OF COMMERCE, ANALYSIS OF WORKERS' COMPENSATION LAWS (1983).

14. ALASKA STAT. §§ 23.30.005-.270 (1984 & Supp. 1985).

15. *Id.* § 23.30.265(10).

16. 2 A. LARSON, *supra* note 3, at § 57.11.

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mm'n, 97 Ill. 2d 424, 454
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v. § 176.102 (West Supp.
Temporary Disability and

920-21 (1982).

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the employee was receiving at the time of the injury.¹⁷ In each individual case, these components may independently affect the worker's eligibility for compensation. Professor Larson illustrates the difference between physical impairment and wage loss as follows:

A claimant may be, in a medical sense, utterly shattered and ruined, but may by sheer determination and ingenuity contrive to make a living for himself; conversely, a claimant may be able to work, in both his and the doctor's opinion, but awareness of his injury may lead employers to refuse him employment. . . . An absolute insistence on medical disability in the abstract would produce a denial of compensation in the latter case, although the wage loss is as real and as directly traceable to the injury as in any other instance. At the other extreme, an insistence on wage loss as the test would deprive the claimant in the former illustration of an award, thus not only penalizing his laudable efforts to make the best of his misfortune but also fostering the absurdity of pronouncing a man nondisabled in spite of the unanimous contrary evidence of medical experts and of common observation. The proper balancing of the medical and the wage-loss factors is, then, the essence of the "disability" problem in workmen's compensation.¹⁸

B. The Definition of Vocational Rehabilitation

In the context of workers' compensation, vocational rehabilitation includes both physical restoration to minimize the worker's medical impairment and vocational restoration to minimize his wage loss. To be effective, the two must be accomplished together, enabling the injured worker to adapt to his specific disability so that he may maintain gainful employment.¹⁹ Most authorities recognize vocational rehabilitation as a necessary and effective part of any workers' compensation program that seeks to fulfill its responsibility to the injured worker and to society.²⁰

Within the workers' compensation system, vocational rehabilitation aims "to restore the industrially injured worker to a state of employability equal to, or as near as possible to that of his pre-injury

17. See ALASKA STAT. § 23.30.265(10) (1984). According to Professor Larson, the second component is *actual* wage loss, the inability to earn wages after the injury. 2 A. LARSON, *supra* note 3, at § 57.11.

18. 2 A. LARSON, *supra* note 3, at § 57.11; see *Aikins v. Happy Hour, Inc.*, 209 Neb. 236, 239, 306 N.W.2d 914, 916-17 (1981) (noting that disability is defined in terms of employability and earning capacity with wage loss as only one indicator of loss of earning capacity); *In re Livesay*, 55 Or. App. 390, 394, 637 P.2d 1370, 1372 (1981) (permanent total disability may be based on a combination of medical and non-medical conditions including age, education and conditions of the labor market).

19. See Note, *Rehabilitation Within the Workmen's Compensation Framework*, 19 RUTGERS L. REV. 401, 404 (1965).

20. Z. JACKSON, *supra* note 1, at 7-8.

status."²¹ The Alaska statute recognizes that the purpose of vocational rehabilitation is the restoration of the disabled worker to "suitable gainful employment."²² It establishes a hierarchy of goals, ranging from work in the same or similar occupation to work in an occupation requiring an academic achievement level different from that possessed by the worker at the time of his injury.²³

Apart from economic considerations, the humanitarian purposes of workers' compensation legislation figure strongly in its vocational rehabilitation aspects. The Insurance Rehabilitation Study Group, an organization composed of members of the insurance industry, stated the purpose of vocational rehabilitation in a 1975 report:

While insurance losses and benefits are usually stated in monetary terms, the full consequences of human disability cannot be measured by money alone. Earnings lost due to accident or sickness can be replaced and medical expenses can be reimbursed, but there is no meaningful way to financially translate the value of an arm or a leg, or the personal dignity of being able to contribute to society as a useful member rather than merely existing disabled and dependent. . . . If insurance is to protect against these human losses, it must do more than provide financial compensation alone. It must also strive to restore such losses. Insurance should provide the means for disabled workers to return to gainful employment whenever possible, and to regain as much functional independence as they can, even if they cannot return to work. Compensation cannot accomplish these goals without rehabilitation.²⁴

The vocational rehabilitation counselor must start a disabled worker off in the direction of full recovery and also smooth the way for his return to the workplace:

Mostly, a vocational counselor combats the disabled individual's fear of the unknown. Remember, that worker has gone from being independent to very dependent. And even though he usually doesn't like that very much, the trauma and insecurity caused by his accident plus a host of other factors can make him hold on to what he has left.

To get that man or woman to let go of his or her financial

21. *Id.* at 6. Vocational rehabilitation programs, outside the context of workers' compensation tend to emphasize the severely disabled and the young, seeking to make them employable, often for the first time, through classroom or sheltered education. Workers' compensation, on the other hand, generally serves a clientele with existing valuable work skills and therefore tends not to be oriented toward the classroom. *Id.* at 7. A further distinction can be found in the fact that private industry generally bears the cost of workers' compensation vocational rehabilitation, while state and federal governments finance vocational rehabilitation programs not related to workers' compensation. *Id.*

22. See ALASKA STAT. § 23.30.041(e), (i) (1984).

23. *Id.* § 23.30.041(i).

24. Z. JACKSON, *supra* note 1, at 8 (quoting THE INSURANCE REHABILITATION STUDY GROUP).

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security blanket (a workers' compensation or long-term disability check) and abandon all his supporters to go out into the cold, cruel world again, perhaps even to start a new career—that takes training and experience and a deep understanding of human motivation. In practice, it's fairly sophisticated. But basically a good counselor takes careful aim with his boot and provides a pretty hefty nudge.²⁵

According to one commentator, the most frequent and well founded criticism of modern workers' compensation is that it creates an impediment to the worker's restoration.²⁶ Other commentators have found that workers' compensation provides neither adequate nor timely rehabilitation services.²⁷ According to Professor Larson, while ten percent of the two million workers injured each year could benefit from rehabilitation, only three percent receive the kind of services they really need.²⁸

Vocational rehabilitation involves more than post-accident care. To be effective, the process of rehabilitation must begin before the emergency arises. "Rehabilitation must begin with an employment climate that reassures each employee that in the event of a work injury he will be given as fair and as sympathetic consideration for continuing employment or for re-employment as the circumstances will permit."²⁹ Effective vocational rehabilitation thus depends on a positive societal attitude toward the role of the disabled and handicapped in the workplace. This attitude must be reflected in the employer's ability to create confidence among his workers that worthwhile employment opportunities will exist after possible accidents.

C. A Brief History of Vocational Rehabilitation

While vocational rehabilitation has received increased attention in the past decade, both physical and vocational rehabilitation have been associated with workers' compensation programs since such programs began seventy years ago.³⁰ Workers' compensation laws arose

25. Lauterbach, *Coaching the Disabled Back to Work*, INDUSTRY WEEK, April 5, 1982, at 52, 55 (quoting Dr. G. Berk Lynch II, vice president of Crawford Rehabilitation Services, Inc., Atlanta, Ga.). See also M. BERKOWITZ, *WORK DISINCENTIVES AND REHABILITATION* (1980).

26. E. CHEIT, *INJURY AND RECOVERY IN THE COURSE OF EMPLOYMENT* 284 (1961).

27. See Z. JACKSON, *supra* note 1, at 1; NATIONAL COMMISSION ON STATE WORKMEN'S COMPENSATION LAWS 20-22 (1972) [hereinafter cited as NATIONAL COMMISSION].

28. 2 A. LARSON, *supra* note 3, § 61.21.

29. Sterner, *The Rehabilitation of Injured Employees*, 1963 A.B.C. SEC. OF INS., NEGL. & COMPENSATION L. 243, 248 (1963).

30. See I. SANCHEZ, E. WORKMAN, C. MORRIS, J. MILLER & M. EDELSTEIN, *THE CALIFORNIA WORKERS' COMPENSATION REHABILITATION SYSTEM* 6 (1981) [hereinafter cited as CALIFORNIA REHABILITATION SYSTEM]; INDUSTRIAL INDEM-

as an alternative to ineffective common law rules that supplied little relief to the injured worker.³¹ The employer liability statutes that evolved in the mid-nineteenth century were the precursors of modern workers' compensation statutes. These laws restricted the employer's use of common law defenses such as contributory negligence, the fellow-servant doctrine, and assumption of risk. Under these laws, however, the worker still had to prove that his injuries were due to his employer's negligence. The complexities of the workplace and the reluctance of fellow workers to testify against their employer often made this task quite difficult to accomplish. In order to provide injured workers with adequate, prompt, and guaranteed payments for medical care and wage loss, while at the same time limiting the employer's financial liability, legislatures incorporated the principle of employer liability without fault into the framework of workers' compensation. This radical departure from the common law and the employer liability laws acknowledged that compensation for work-related accidents is a cost of production: the costs of work-related injuries were to be allocated to the employer, not because of any presumption that he was to blame for every individual tragedy, but because of the inherent hazards of industrial employment.³²

Many of the early advocates of workers' compensation legislation looked to the origin of vocational rehabilitation when formulating their own programs.³³ Zee P. Jackson, in her study of the Alaska program, traces the origins of vocational rehabilitation programs in the United States to 1914, when a member of the Massachusetts Industrial Accident Board traveled to Germany to study its seminal vocational rehabilitation program. Following the study and a meeting in 1916 of the International Association of Industrial Accident Boards and Commissions, Massachusetts enacted the first state vocational rehabilitation law in 1918.³⁴ This law authorized the Massachusetts Board of Education to retrain victims of industrial accidents and diseases.³⁵

Several states followed Massachusetts' lead.³⁶ Recognizing that the rehabilitation of disabled workers was a primary goal of workers' compensation, the California Industrial Accident Commission noted in a 1919 report that:

If a man cannot work, he cannot live. If he can but half work, he

NITY CO., VOCATIONAL REHABILITATION: ADDED HOPE FOR INJURED WORKERS, INSURER, Pub. No. 83-A (1983).

31. For a general history, see Epstein, *The Historical Origins and Economic Structure of Workers' Compensation Law*, 16 GA. L. REV. 775 (1982).

32. See *id.*

33. CALIFORNIA REHABILITATION SYSTEM, *supra* note 30, at 6.

34. Z. JACKSON, *supra* note 1, at 6; M. BERKOWITZ, *supra* note 25, at 16.

35. *Id.*

36. See Z. JACKSON, *supra* note 1, at 6.

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can but half live. The mills of our industries have ground off his arms, or hands, or legs, or feet, or put out his eyes. But there is a practical and easy solution to the problem of his rehabilitation. The solution is not a pension. He does not ask that. The offer of a pension would be a moral crime. He asks simply a new industrial chance through industrial re-education. . . . To this he is entitled by our industrial prosperity achieved, in part, at his expense. To this he is entitled by the very humanity of the age.³⁷

That same year, California established a special fund for the rehabilitation of injured workers.³⁸

During the following year, Congress passed the Vocational Rehabilitation Act of 1920,³⁹ which established the federal/state vocational rehabilitation program. Within the next eighteen months, thirty-four states passed the vocational rehabilitation legislation necessary to obtain federal funds under the Act.⁴⁰ These funds were made available to the states through the Federal Board of Education on a matching basis with the state and federal governments each supplying one-half of the funding.⁴¹ While the Vocational Rehabilitation Act of 1920 focused on the needs of the industrially injured worker, subsequent federal legislation emphasized different aspects of vocational rehabilitation.⁴²

37. E. CHEIT, *supra* note 26, at 282 (quoting CALIFORNIA INDUSTRIAL ACCIDENT COMM'N, REPORT ON SPECIAL INVESTIGATIONS OF SERIOUS PERMANENT INJURIES (1914-1918) (1919)).

38. E. CHEIT, *supra* note 26, at 282.

39. Ch. 219, 41 Stat. 735 (formerly codified as amended at 29 U.S.C. §§ 31-42b (repealed 1973)); for current provisions on federal/state vocational rehabilitation, see 29 U.S.C. §§ 701-796i (1976 & Supp. V 1981).

40. CALIFORNIA REHABILITATION SYSTEM, *supra* note 30, at 6-7.

41. *Id.*

42. For example, the 1936 Randolph-Sheppard Act authorized the establishment of vending stands operated by the blind in public buildings. Ch. 638, 49 Stat. 1559 (1936) (codified as amended at 20 U.S.C. §§ 107-107f (1982)).

The Vocational Rehabilitation Act of 1954 dramatically increased federal/state funding for vocational rehabilitation. It also financed additional research and training programs and provided funding for the building or remodeling of rehabilitation facilities. Ch. 655, 68 Stat. 662 (1954) (formerly codified as amended at 29 U.S.C. §§ 31-42(b) (repealed 1973)).

The Rehabilitation Act of 1973, replacing the Vocational Rehabilitation Act of 1920, forbids discrimination in employment and advancement on the basis of disability by business and industry receiving federal funds. Pub. L. No. 93-112, 87 Stat. 357, 390 (codified as amended at 29 U.S.C. §§ 701-796i) (1976 & Supp. V 1981). Section 503, 29 U.S.C. § 793 (1976 & Supp. V 1981), requires companies receiving over \$2,500 in federal government contracts—approximately half of all businesses in the United States—to actively recruit disabled employees. L. BRUCK, ACCESS: THE GUIDE TO A BETTER LIFE FOR DISABLED AMERICANS 43 (1978). Goods and services that employers may provide to disabled workers under the Act include evaluation of rehabilitation potential; counseling, guidance, referral, and placement; vocational training; physical and mental restoration services; maintenance; interpretive services for the

By the 1970's, the private vocational rehabilitation services industry had grown tremendously. State legislatures had gradually expanded available compensation benefits, causing outgoing payments to soar more than 400 percent between 1970 and 1976.⁴³ Since that time, benefit costs have continued to climb steadily. According to one estimate, the private sector's annual assessment for private compensation insurance coverage increased from \$3.5 billion in 1970 to \$15.3 billion in 1980.⁴⁴ These figures do not include costs absorbed by the growing number of self-insured companies, nor do they include the premiums paid into state-administered workers' compensation insurance funds.⁴⁵ In an effort to reduce premiums paid to such state funds, some employers have increased their utilization of private rehabilitation programs.⁴⁶

Budget cuts in the 1980's also induced growth in private rehabilitation services by forcing state agencies to focus almost exclusively on the catastrophically injured and the poor. With this loss of state aid, private agency services have been needed to accomplish vocational rehabilitation in workers' compensation cases.⁴⁷

Third, employers have often become frustrated with state agencies that operate under the federal mandate to maximize the potential of all disabled persons. Some employers perceive this general mandate as antagonistic to their goal of restoring the worker to the workplace as quickly and as inexpensively as possible. To further that goal, these employers increasingly utilize private rehabilitation services.⁴⁸

Despite the many gains in workers' compensation programs and vocational rehabilitation made in the recent past, the National Commission on State Workmen's Compensation Laws observed in 1972 that "the basic principles of the present program are largely those established 50 or 60 years ago," and cautioned that those principles "can be completely understood only in the context of the forces present at their creation."⁴⁹ While the basic principles underlying the programs may have remained fairly constant, the environment in which they are now expected to operate has become increasingly complex. Technical advances have produced new and often indeterminable physical and

deaf and reader services for the blind; recruitment and training services; rehabilitation teaching services; occupational licenses, tools, equipment, initial stocks and supplies; transportation in connection with vocational rehabilitation; and technological aids and devices. 29 U.S.C. § 723 (1982).

43. LAUTERBACH, *supra* note 25, at 54.

44. *Id.*

45. *Id.*

46. *Id.*

47. *Id.*

48. *Id.*

49. NATIONAL COMMISSION, *supra* note 27, at 35.

toxic hazards for employees. Furthermore, the medical profession's improved understanding of the various factors that cause certain diseases and injuries has led to an increase in the number of diseases and injuries considered to be work-related. After reviewing the current state of the workers' compensation system, the National Commission reported several problems, most notably the system's failure either to provide for compensation reflective of rising wage levels, or to reduce the amount of litigation associated with workers' compensation claims.⁵⁰

The National Commission also found significant problems in the systems designed to deliver vocational rehabilitation to injured workers. In its report the National Commission stated, "Vocational guidance and instruction services are spotty and placement services for rehabilitated workers are generally inadequate."⁵¹ The author of a 1982 study of the Alaska program also concluded that the Alaska delivery system was "not providing timely and adequate rehabilitation services to a substantial number of those injured workers who could benefit from them."⁵² If industrially-disabled workers are to gain a meaningful position in the work force, the system surely must improve the availability and practicality of vocational rehabilitation for those who require it.

III. PHILOSOPHY OF VOCATIONAL REHABILITATION

Vocational rehabilitation within the framework of workers' compensation generally aims to restore the industrially-injured worker to suitable gainful employment in the shortest time possible. Still, state legislatures and courts differ greatly in their expressions of the philosophy behind, and purpose of, workers' compensation vocational rehabilitation. These differences, in turn, affect both the foundation eligibility criteria and the consequences of a refusal of benefits under these criteria.

A. The Purposes and Goals of Workers' Compensation Vocational Rehabilitation

Several basic views of vocational rehabilitation permeate workers' compensation law. First, commentators have stressed the humanitarian nature of workers' compensation and vocational rehabilitation. For example, Zee P. Jackson recognizes that one of the "underlying concepts" of vocational rehabilitation is the preservation of "the intrinsic dignity of man, his feeling of self-worth and his right to life,

50. *Id.*

51. *Id.* at 20.

52. Z. JACKSON, *supra* note 1, at 1.

liberty and the pursuit of happiness."⁵³ Similarly, the National Commission on State Workmen's Compensation Laws acknowledges that "[t]he worker's feeling of worth and well-being is a legitimate concern."⁵⁴

A second tenet of vocational rehabilitation prevalent in workers' compensation law revolves around the economic considerations at stake. All state workers' compensation statutes that contain a policy statement on the purpose of vocational rehabilitation recognize the primary purpose as restoring the worker to gainful employment.⁵⁵ The Minnesota statute specifically provides:

Rehabilitation is intended to restore the injured employee, through physical and vocational rehabilitation, so the employee may return to a job related to the employee's former employment or to a job in another work area which produces an economic status as close as possible to that the employee would have enjoyed without disability. Rehabilitation to a job with a higher economic status than would have occurred without disability is permitted if it can be demonstrated that this rehabilitation is necessary to increase the likelihood of reemployment. Economic status is to be measured not only by opportunity for immediate income but also by opportunity for future income.⁵⁶

53. *Id.* at 7.

54. NATIONAL COMMISSION, *supra* note 27, at 39.

55. IDAHO CODE § 72-501A (Supp. 1985); KAN. STAT. ANN. § 44-510g (1981); KY. REV. STAT. § 342.710(a) (Supp. 1984); ME. REV. STAT. ANN. tit. 39, § 81 (Supp. 1985); MINN. STAT. ANN. § 176.102(1) (West Supp. 1985); NEB. REV. STAT. § 48-152.01(1) (1984); NEV. REV. STAT. § 616.222 (1985); N.D. CENT. CODE § 65-05.1-01 (1985); OR. REV. STAT. § 656.268(1) (1983); R.I. GEN. LAWS § 28-33-41 (Supp. 1985); WASH. REV. CODE § 51.32.095(1) (Supp. 1986); WIS. STAT. ANN. § 102.42(9)(a) (West Supp. 1985).

56. MINN. STAT. ANN. § 176.102(1) (West Supp. 1985).

Nevada law states that rehabilitation may be ordered "[t]o aid in returning an injured employee to work or to assist in lessening or removing any resulting handicap." NEV. REV. STAT. § 616.222 (1985).

North Dakota's statute reads the most broadly, providing services "so far as possible, necessary to assist the claimant and the claimant's family in the adjustments required by the injury to the end that the claimant may receive comprehensive rehabilitation services. Such services shall include medical, psychological, economic, and social rehabilitation." N.D. CENT. CODE § 65-05.1-01 (1985).

In Oregon, the relevant statute provides that one purpose of workers' compensation "is to restore the injured worker as soon as possible and as near as possible to a condition of self support and maintenance as an able-bodied worker." OR. REV. STAT. § 656.268(1) (1983). See *Firkus v. Alder Creek Lumber*, 48 Or. App. 251, 257, 617 P.2d 620, 623 (1980).

Rhode Island law provides, "The department of labor, division of workers' compensation and the workers' compensation commission shall expedite the rehabilitation of and the return to remunerative employment of all disabled employees . . ." R.I. GEN. LAWS § 28-33-41 (Supp. 1985). The Rhode Island statute further provides that "rehabilitative services shall be appropriate to the needs and capabilities of injured workers." *Id.*

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57. NEB. REV.

58. *Id.* § 48-16

59. 205 Neb. 5

60. *Id.* at 549.

61. Z. JACKSON, *Workers' Compensation* (1982) (purpose of

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62. LAUTERBA

63. See *id.* at 5.

64. *Id.* at 53.

As another example, the Nebraska Workmen's Compensation Act provides for vocational rehabilitation services when a worker is "unable to perform work for which he has previous training or experience."⁵⁷ In a separate section, the statute imposes penalties upon an employer who refuses without reasonable cause to undertake vocational rehabilitation that is in the "best interests" of the worker and that will increase his earning capacity.⁵⁸ The Nebraska Supreme Court, in *Sidel v. Travelers Insurance Co.*,⁵⁹ extrapolating from this "best interests" standard, held that the state Workmen's Compensation Court may order vocational rehabilitation whenever a worker has suffered a reduction in earning power because of a compensable injury and vocational rehabilitation will increase his earning capacity.⁶⁰

While not discounting the importance of the humanitarian aspects of returning a worker to employment, Zee P. Jackson's economic analysis of Alaska vocational rehabilitation stresses considerations of efficiency:

The timely return of an industrially injured worker to a safe employment status, commensurate with that held at the time of injury, through the investment of necessary resources, is a logical goal in a workers' compensation program. The end result is an economic as well as a social asset to the injured worker, the compensation system and society. Well-managed, cost-effective rehabilitation will enable many disabled workers to return to productive jobs and thus reduce compensation costs.⁶¹

While the extensive vocational rehabilitation required in special circumstances may be quite costly, the typical case involves an expenditure of only \$1,200 to \$1,800.⁶² Several factors mitigate the overall cost of vocational rehabilitation. Because rehabilitation reduces the length of temporary disability, it speeds the worker's return to employment and consequently ends his need for compensation. Additionally, employers in a position to rehire a disabled employee regain a loyal, experienced worker and generate good will for their business.⁶³ Some reports have shown that employers consistently save between ten and eleven dollars for every dollar spent on rehabilitation.⁶⁴

A third view of vocational rehabilitation is as an insurance pro-

57. NEB. REV. STAT. § 48-162.01(3) (1984).

58. *Id.* § 48-162.01(6).

59. 205 Neb. 541, 288 N.W.2d 482 (1980).

60. *Id.* at 549, 288 N.W.2d at 486.

61. Z. JACKSON, *supra* note 1, at 7; *see also* Shasta Convalescent Hosp. v. Workers' Compensation Appeals Bd., 132 Cal. App. 3d 997, 1001, 183 Cal. Rptr. 602, 603 (1982) (purpose of rehabilitation is to return injured employee to gainful employment as soon as practicable and as close as possible to maximum self-support).

62. LAUTERBACH, *supra* note 25, at 55.

63. *See id.* at 53-54.

64. *Id.* at 53.

gram providing compensation for work-related accidents or illnesses.⁶⁵ Commentators taking this position analyze the scope of the "insurance coverage" to determine the type and extent of benefits available. This view of workers' compensation as a cash indemnity or insurance program, however, fails to recognize that an employee's disability can have a tremendous overall impact on the employee's family and financial outlook. As the National Commission on State Workmen's Compensation Laws noted,

[t]oo often workers' compensation is viewed simply as a cash indemnity to pay the worker for loss of earnings or impairment or both. The cash benefits are important, but equally so are medical care and rehabilitation services. The objectives of workmen's compensation include repair of the damage both to the earning capacity and the physical condition of the workers.⁶⁶

As a fourth philosophy of vocational rehabilitation, some commentators simply characterize rehabilitation as a form of restitution owed the injured worker. "[S]ince it was an industrial injury which necessitated his removal from a job, restitution is not complete until the worker is returned to a job."⁶⁷

Finally, and in contrast to the fourth view, the Alaska Supreme Court has described vocational rehabilitation as a method by which an employee mitigates the damages owed him by his employer. In *Bignell v. Wise Mechanical Contractors*,⁶⁸ the court wrote that, just as the law generally requires an injured employee to submit to reasonable medical treatment, "[t]here is no reason why a similar rule should not apply to mitigation through vocational rehabilitation."⁶⁹

B. Eligibility for Vocational Rehabilitation Benefits

Most state laws entitle a worker to vocational rehabilitation benefits if he has suffered a permanent injury or illness in the course of his employment that prevents him from performing work for which he has previous training or experience.⁷⁰ Therefore, the factors to be con-

65. See Note, *supra* note 19, at 401.

66. NATIONAL COMMISSION, *supra* note 27, at 38.

67. Note, *Eligibility for Vocational Rehabilitation Under the Maine Workers' Compensation Act: Troubling New Standards*, 32 ME. L. REV. 237, 261 (1980) (footnote omitted).

68. 651 P.2d 1163 (Alaska 1982).

69. *Id.* at 1168; see also *Kalevas v. J.H. Williar & Co.*, 27 A.D.2d 22, 23-24, 275 N.Y.S.2d 546, 548 (1966), *aff'd*, 20 N.Y.2d 812, 231 N.E.2d 290, 284 N.Y.S.2d 704 (1967) (recognizing considerable logic in requiring a compensation claimant to mitigate his damages by doing all in his power to obtain work, but refusing to require submission to rehabilitation as a precondition to compensation); *Leedy v. Knox*, 34 Or. App. 911, 581 P.2d 530, 535 (1978) (recognizing that worker's permanent disability award is subject to modification upon completion of rehabilitation program).

70. See, e.g., *Camp v. Blount Bros. Corp.*, 195 Neb. 459, 465, 238 N.W.2d 634,

sidered in assessing eligibility for benefits include the nature of the worker's physical disability and the degree of impairment of his wage-earning capacity. It is intuitively obvious that a third factor to be considered is the feasibility of the worker's proposed vocational rehabilitation plan.

1. *The Nature of the Worker's Physical Disability.* Generally speaking, in order to qualify him for rehabilitation, the injury or illness suffered by the worker must lead, or be likely to lead, to permanent disability.⁷¹ For example, in *Timberline Sawmill & Lumber v. Industrial Commission*,⁷² a Colorado court of appeals held that where implicit in the Commission's finding on a workmen's compensation claim is the conclusion that a worker is permanently disabled as a result of his injury, vocational rehabilitation is to be made available. This aid must be provided even though the worker has not yet asserted a claim for permanent partial disability.

Other than the requirement of permanent disability, most statutes do not base eligibility for rehabilitation on the type of injury or illness suffered by the worker. There are, however, exceptions to the general rule. South Carolina, for example, limits the availability of vocational rehabilitation to employees suffering from ionizing radiation injury.⁷³

2. *Impairment of the Worker's Wage-Earning Capacity.* After finding that an employee is likely to suffer permanent disability, the next step in deciding whether an employee is eligible for vocational rehabilitation is determining whether the employee's wage-earning capacity has diminished to the point that he should pursue vocational rehabilitation. Proper measurement of wage-earning capacity should focus not only on the amounts previously earned, but on the career or employment opportunities the employee has lost by virtue of his disability.

A substantial number of states focus on the injured worker's inability to earn pre-injury wages in determining rehabilitation eligibility. For example, a Florida district court of appeals, in *Walker v. New Fern Restorium*,⁷⁴ noted that "Ordinarily, rehabilitation should be

638 (1976) (injured worker is entitled to vocational rehabilitation services, including retraining and job placement as may be necessary to restore him to suitable employment); *Behrens v. Ken Corp.*, 191 Neb. 625, 627, 216 N.W.2d 733, 735 (1974); *Wilson v. Lewis*, 273 S.E.2d 96 (W. Va. 1980).

71. See e.g., ALASKA STAT. § 23.30.041(c) (1984); HAW. REV. STAT. § 386-25(a) (Supp. 1984); IDAHO CODE § 72-450 (Supp. 1985); IOWA CODE ANN. § 85.70 (West 1984).

72. 624 P.2d 367 (Colo. Ct. App. 1981).

73. S.C. CODE ANN. § 42-13-90 (Law. Co-op. 1976).

74. 409 So. 2d 1201 (Fla. Dist. Ct. App. 1982).

provided voluntarily by the employer or carrier when the injured employee is no longer able to earn pre-injury wages."⁷⁵ The Colorado workers' compensation statute requires that before providing vocational rehabilitation benefits, a claimant's injury must preclude him from performing any work for which he has previous training.⁷⁶ In *Timberline Sawmill*, a Colorado court of appeals construed this requirement as not to include all work, but merely work that pays nearly as well as the work from which the claimant was precluded by his injury.⁷⁷ This view that the injured worker is entitled to vocational rehabilitation benefits when unable to continue working at a similar wage level is shared by several other states.

In the Illinois case of *Hunter Corp. v. Industrial Commission*,⁷⁸ an employer argued that while the claimant could no longer work as a journeyman pipefitter, he could market his knowledge and abilities in antique dealing and wood carving and thus eliminate the need for vocational rehabilitation. The Illinois Supreme Court disagreed that the potential alternative employment absolutely obviated the need for rehabilitation:

That one is able to generate some income through an activity does not of itself permit a conclusion that one can support oneself by that activity. The record shows that the claimant's interest in collectibles may be characterized as a hobby rather than as an activity through which the claimant is supporting himself.⁷⁹

The Illinois Supreme Court observed, however, that vocational rehabilitation need not automatically restore all claimants to their pre-injury economic status. In some cases pre-injury earnings might be unrepresentatively high. On the other hand, the court noted that an injured employee who had earned subsistence level wages prior to his injury should not be restricted to that amount.⁸⁰

3. *Post Rehabilitation Potential Under An Appropriate Plan.* Finally, even though a claimant is otherwise eligible for vocational reha-

75. *Id.* at 1204; see also *City of Miami v. Simpson*, 459 So.2d 326 (Fla. Dist. Ct. App. 1984).

76. COLO. REV. STAT. § 8-49-101(4) (Supp. 1985).

77. 624 P.2d 367 (Colo. Ct. App. 1981).

78. 86 Ill. 2d 489, 427 N.E.2d 1247 (1981).

79. *Id.* at 497, 427 N.E.2d at 1250-51.

80. *Id.* at 498, 427 N.E.2d at 1251. In contrast to the approach discussed above, the Maine Supreme Court had severely restricted the availability of vocational rehabilitation under its former vocational rehabilitation provisions by adopting a conservative approach that insisted on a worker's total or near total disability before he was eligible for rehabilitation aid. See *McInnis v. Town of Bar Harbor*, 381 A.2d 739 (Me. 1978); *Lancaster v. Cooper Indus.*, 387 A.2d 5 (Me. 1978). It is not clear how these cases are affected by the state's new vocational rehabilitation provisions. See ME. REV. STAT. ANN. §§ 81-90 (Supp. 1985).

bilitation, he must proffer an acceptable plan of rehabilitation prior to receipt of any aid.⁸¹ Usually the worker must obtain administrative approval of the plan he suggests before it can become effective.⁸² This approval often depends on such factors as (1) the cost of the plan, (2) the length of time required to complete the plan, (3) the prospects of employment upon completion of the plan, and (4) the worker's prospects for successfully completing the plan.⁸³

An example should demonstrate the potential interaction of these factors. In *Bishop v. Town of Barre*,⁸⁴ the claimant submitted a vocational rehabilitation plan under which he would receive \$2,695 to establish a small livestock business. This venture would have yielded an estimated \$200 annually. The Vermont Supreme Court upheld the Labor Commissioner's denial of the plan on the grounds that its return was insufficient to qualify the operation of the business as "suitable employment."⁸⁵

C. Penalties for Refusing to Participate in Vocational Rehabilitation

Many jurisdictions provide that a claimant's refusal to participate in vocational rehabilitation results in the forfeiture of his disability compensation throughout the period of refusal.⁸⁶ This is the case in Alaska.⁸⁷ Other states may only suspend or reduce the amount of the payments during the period of the worker's non-participation.⁸⁸ Some states, however, make these reductions in compensation difficult for an employer to obtain. For example, in Louisiana, the employer must show by clear and convincing evidence that the claimant's continuing disability is due to his willful and unreasonable failure to undergo vocational rehabilitation.⁸⁹

Other states do not reduce benefits for non-participation in vocational rehabilitation. In Colorado, if a worker withdraws from a vocational rehabilitation program, the amount of any permanent partial disability benefits he ultimately receives will be calculated as though

81. See e.g., ALASKA STAT. § 23.30.041(f) (1984); see also *infra* notes 214-20 and accompanying text.

82. See e.g., ALASKA STAT. § 23.30.041(f) (1984).

83. See e.g., *infra* note 209 and accompanying text.

84. 140 Vt. 564, 442 A.2d 50 (1982).

85. *Id.* at 578, 442 A.2d at 57.

86. See e.g., *Wilmington Hous. Auth. v. Gonzales*, 333 A.2d 172 (Del. Super. Ct. 1975).

87. ALASKA STAT. § 23.30.041 (1984).

88. See e.g., KY. REV. STAT. §§ 342.710, .715 (1983).

89. *American Home Assur. Co. v. Johnson*, 373 So.2d 742, 744 (La. Ct. App. 1979).

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he had successfully completed the program.⁹⁰ Similarly, in Oklahoma, a worker's refusal to participate in a vocational rehabilitation program does not lead to any reduction in his benefits.⁹¹

IV. VOCATIONAL REHABILITATION BENEFITS

A. Type and Scope of Vocational Rehabilitation Benefits and Compensation

In order to promote the vocational rehabilitation of workers who are unable to return to suitable gainful employment as a result of work-related injuries or illnesses, workers' compensation statutes provide various benefits. These benefits typically include the following: evaluations, services, and job placement opportunities, as well as compensation for disability and other supplemental benefits.⁹²

Along with the benefits typically provided, injured workers often need additional special benefits during the rehabilitation process. A worker who pursues vocational rehabilitation will likely have extra expenses that might include transportation, tuition, tools, special clothing and uniforms, books, supplies, occupational and professional license fees, and, if the rehabilitation program requires the worker to live away from home, room and board.

For vocational rehabilitation to be successful, the benefits provided must permit an injured worker to concentrate and focus on his program free from unnecessary financial and other distractions. To this end, enough money must be provided to the worker during the vocational rehabilitation period to cover his expenses for such essentials as groceries and rent, so that the worker need not feel guilty for imposing a financial burden on his family. Moreover, many workers undergoing vocational rehabilitation may need counseling services because they often develop a deep fear of returning to work in a new occupation. For example, a worker in rehabilitation may fear the prospect of irregular or marginal employment, his own potentially inadequate job performance, and rejection by employers, fellow workers, customers, or others.

Incentives may also be necessary to encourage the worker to give up the relative economic security provided by the variety of governmental income supplements available to him in addition to workers' compensation, in exchange for the uncertainties associated with em-

90. COLO. REV. STAT. § 8-49-101(5) (Supp. 1985). See *Oller v. Champion Parts Rebuilders, Inc.*, 635 S.W.2d 276 (Ark. Ct. App. 1982); *Kalevas v. J.H. Williams & Co.*, 27 A.D. 2d 22, 275 N.Y.S.2d 546 (1966), *aff'd*, 20 N.Y.2d 812, 231 N.E.2d 290, 284 N.Y.S.2d 704 (1967).

91. OKLA. STAT. ANN. tit. 85, § 16(A) (West Supp. 1985).

92. See, e.g., MINN. STAT. ANN. § 176.102 (West Supp. 1985); N.M. STAT. ANN. § 52-1-50 (Supp. 1983).

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ployment in a new field. The availability of food stamps, medical and legal aid for the poor, Aid to Families with Dependent Children, Social Security Disability Insurance, and a host of other benefits, both public and private, may very well remove much of the relevant economic advantages of returning to work and so undercut the motivation necessary for a worker to successfully pursue vocational rehabilitation. Providing benefits during rehabilitation may serve to counter this motivational drain.

A comprehensive workers' compensation vocational rehabilitation plan should provide all of the benefits mentioned above. A number of statutes extend the above list by providing additional innovative benefits that are either designed to assist the worker directly or to encourage employers to rehire their injured workers or to hire the disabled.⁹³ Newly-hired disabled workers may particularly need these additional incentives because of the potentially difficult and lengthy adjustment periods they may face. Employers, too, may need special incentives to encourage them to make the substantial job modifications that the employment of disabled workers may require. To the extent that such incentives are available, they will greatly enhance a vocational rehabilitation program's chances of success.⁹⁴

B. Disability Compensation During Vocational Rehabilitation

In order to provide the financial security necessary to enable an injured worker to concentrate on his rehabilitation, some statutes provide compensation for a worker during vocational rehabilitation. Where provided, this compensation usually takes the form of disability compensation.

Typically, disability compensation takes one of two forms. The first is temporary disability compensation, which provides compensation to workers suffering injuries of a temporary nature. It is sometimes subdivided into temporary total disability compensation and temporary partial disability compensation, depending on whether the worker is totally or partially disabled. The second general type of aid is permanent disability compensation, which provides compensation to workers suffering injuries of a more lasting nature. This form of compensation may also be divided into permanent total disability compensation and permanent partial disability compensation.

93. See *infra* notes 195-203 and accompanying text.

94. A number of social factors must also be taken into account when fashioning benefit programs. As Levitan and Taggart have pointed out, a disproportionate number of the work-disabled have complicated mental or physical problems that are compounded by limited education, limited work experience, other employment impairment, or socio-economic considerations. Levitan & Taggart, *Employment Problems of Disabled Persons*, 100 MONTHLY LAB. REV. 3 (1977).

Some statutes do not provide any disability compensation to injured workers during vocational rehabilitation, while some provide one or more types or subdivisions of disability compensation. The various state and federal schemes are discussed below.

1. *Temporary Disability Compensation Not Provided During Vocational Rehabilitation.* Many states provide injured workers temporary total or partial disability compensation only until the worker reaches a certain stage in his recovery or improvement in his medical condition. To the extent that the employee undergoes vocational rehabilitation before his medical condition improves to the level of this cut-off condition, he is compensated during vocational rehabilitation. In these states, however, after the worker reaches the cut-off condition he is not compensated at all despite the fact that he is still completing his vocational rehabilitation and thus is unlikely to be working. The worker must face vocational rehabilitation with the potential disadvantage of financial worries and concerns.

Currently twenty states cut off temporary disability compensation at a predetermined stage of medical condition or treatment, regardless of whether the worker is participating in a vocational rehabilitation program at that time.⁹⁵ Some of these states enforce this result by statute, some by case law.

In six states the temporary disability compensation ends when the injured worker achieves maximum medical recovery. These states are: Alabama,⁹⁶ Georgia,⁹⁷ Mississippi,⁹⁸ South Carolina,⁹⁹ Tennessee,¹⁰⁰ and Virginia.¹⁰¹ Alabama, however, will allow the injured worker permanent disability compensation under certain circumstances discussed later in this article.¹⁰² Therefore, not all Alabama injured workers are denied all compensation during their vocational rehabilitation even if they reach maximum medical recovery during their rehabilitation periods.

Other states use cut-off stages similar to the maximum medical recovery scheme. New Mexico terminates temporary disability compensation when the injured worker reaches a static or stationary con-

95. See *infra* notes 96-123 and accompanying text.

96. *Floyd v. Hous. Auth.*, 397 So.2d 136 (Ala. Civ. App.), *cert. denied*, 397 So.2d 139 (Ala. 1981).

97. *Nance v. Argonaut Ins. Co.*, 143 Ga. App. 537, 239 S.E.2d 156 (1977).

98. MISS. CODE ANN. § 71-3-17 (1972 & Supp. 1985). See *Azwel v. Franklin Assoc.*, 374 So.2d 766 (Miss. 1979).

99. *Burns v. Joyner*, 264 S.C. 207, 213 S.E.2d 734 (1975).

100. *Brown Shoe Co. v. Pipes*, 581 S.W.2d 140 (Tenn. 1979).

101. *County of Spotsylvania v. Hart*, 218 Va. 565, 238 S.E.2d 813 (1977).

102. See *infra* notes 146-47 and accompanying text.

dition.¹⁰³ Compensation is cut off in Montana¹⁰⁴ and New Hampshire¹⁰⁵ when the injured worker achieves medical stability. Temporary disability compensation terminates in Delaware when the injured worker's medical condition becomes fixed,¹⁰⁶ in Indiana when the worker reaches a permanent and quiescent state of medical condition,¹⁰⁷ and in Arizona when the injured worker reaches a stationary physical condition.¹⁰⁸

Using a different approach, Nevada provides that compensation for "temporary total disability ceases when any physician or chiropractor determines that the employee is capable of any gainful employment."¹⁰⁹ Similarly, the Wyoming statute provides, "As soon as the recovery is so complete that the earning power of the employee at a gainful occupation for which he is reasonably suited by experience or training, is substantially restored, the [temporary total disability] payment shall cease."¹¹⁰

Arkansas courts have held that under that state's workers' compensation program, benefits for temporary disability cease at the beginning of the vocational rehabilitation period. In *Model Laundry & Dry Cleaning v. Simmons*,¹¹¹ the Arkansas Workers' Compensation Commission had found that an injured worker should receive rehabilitation payments at the statutory rate of temporary partial disability payments. The Arkansas Court of Appeals reversed, however, finding no necessary connection between statutory provisions concerning temporary disability¹¹² and provisions¹¹³ providing rehabilitation benefits.¹¹⁴ Similarly, in *Ryan v. NAPA*,¹¹⁵ the Arkansas Court of Appeals held that where a claimant is entitled to permanent partial disability benefits, the payment of such benefits must be suspended during

103. *Lane v. Levi Strauss & Co.*, 92 N.M. 504, 590 P.2d 652 (Cl. App. 1979).

104. MONT. CODE ANN. § 37-71-116(12), (13) (1981); *Anderson v. Carlsons Transp.*, 178 Mont. 290, 583 P.2d 440 (1978).

105. *Dodier v. State Dep't of Labor*, 117 N.H. 315, 373 A.2d 341 (1977).

106. *Pusey v. Natkins & Co.*, 428 A.2d 1155, 1157 (Del. 1981).

107. *Allen v. United Tele. Co.*, 168 Ind. App. 696, 345 N.E.2d 261 (1976).

108. ARIZ. REV. STAT. ANN. §§ 23-1044(F), -1047(A) (1983); *Cleator v. Indus. Comm'n*, 129 Ariz. 179, 629 P.2d 1015 (Cl. App. 1981).

109. NEV. REV. STAT. § 616.585(3) (1985).

110. WYO. STAT. § 27-12-402(b) (1983).

111. 596 S.W.2d 337 (Ark. Ct. App. 1980).

112. See ARK. STAT. ANN. § 81-1313(b) (1983), which provides for a payment to the employee who suffers partial disability resulting in a decrease of his average weekly wages. The payment is to be sixty-six and two-thirds percent of the difference between the employee's average weekly wage before the accident and his wage earning capacity after the injury. *Id.*

113. *Id.* § 81-1310(f) (Supp. 1985).

114. 596 S.W.2d at 339.

115. 598 S.W.2d 443 (Ark. Ct. App. 1980).

vocational rehabilitation.¹¹⁶

Five states — Missouri,¹¹⁷ North Carolina,¹¹⁸ Pennsylvania,¹¹⁹ Utah,¹²⁰ and Vermont¹²¹ — provide that temporary disability compensation is only available during an injured worker's healing process. When the worker is healed, the compensation ends. The Vermont decision in *Bishop v. Town of Barre*,¹²² defined the end of the healing process as the time when the recovery process ends, or when the worker has achieved maximum possible restoration of his earning power.¹²³ Still, despite the impact that rehabilitation may exert on restoration of earning power, these states do not seem to perceive vocational rehabilitation to be a part of the healing process.

2. *Temporary Disability Compensation Provided During Vocational Rehabilitation.* Eight states provide that temporary disability compensation is available to the injured worker both during his medical recovery and afterward throughout his vocational rehabilitation period. The worker may receive either temporary partial disability or temporary total disability compensation. In effect, these eight states have decided that a worker has not fully recovered, and is still temporarily disabled, until he completes his rehabilitation.

In *Bignell v. Wise Mechanical Contractors*,¹²⁴ the Alaska Supreme Court, construing former Alaska statute section 23.30.191,¹²⁵ held that a worker with an unscheduled disability,¹²⁶ whose condition has stabilized medically, but who was still pursuing an approved vocational rehabilitation program, should continue to receive temporary disability benefits.¹²⁷ The Alaska Workers' Compensation Board later applied the *Bignell* holding to those cases involving scheduled disabilities, reasoning that the considerations that underlie the holding apply

116. *Id.* at 445.

117. MO. ANN. STAT. § 287.170(1) (Vernon Supp. 1986).

118. N.C. GEN. STAT. §§ 97-31 (1985).

119. 77 PA. CONS. STAT. ANN. § 513(25) (Purdon Supp. 1985).

120. UTAH CODE ANN. §§ 35-1-65, -67 (Supp. 1985).

121. *Bishop v. Town of Barre*, 140 Vt. 564, 442 A.2d 50 (1982).

122. *Id.*

123. *Id.* at 571, 442 A.2d at 52.

124. 651 P.2d 1163 (Alaska 1982).

125. ALASKA STAT. § 23.30.191 (repealed 1982). For current Alaska law concerning rehabilitation of injured workers, see ALASKA STAT. § 23.30.041 (1984). ALASKA STAT. § 23.30.041(g) (1984) provides that "Temporary disability under [ALASKA STAT. §§ 23.30.185 or 23.30.200] shall be paid throughout the rehabilitation process."

126. A "scheduled disability" in workers compensation law is a disability, such as the loss of an arm, for which a specific sum of money is payable by statute. BLACK'S LAW DICTIONARY 699 (Abridged 5th ed. 1983).

127. 651 P.2d at 1168.

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Consistent with the Alaska approach, the Illinois Supreme Court held in *Hunter Corp. v. Industrial Commission*,¹²⁹ that a claimant should continue to receive temporary disability benefits during vocational rehabilitation. Temporary disability compensation is necessary because "[u]ntil the claimant has completed a prescribed rehabilitation program, the issue of the extent of permanent disability cannot be determined."¹³⁰ And, of course, no permanent disability compensation can be awarded until the permanent disability is determined.

In Florida, the date of maximum medical recovery is artificially established as the date vocational rehabilitation is completed.¹³¹ Temporary disability compensation, therefore, is available to the injured worker throughout his rehabilitation.

Oregon also provides temporary disability compensation throughout the vocational rehabilitation period. This compensation, however, is reduced by any sums that the injured worker earns while participating in the vocational rehabilitation.¹³²

In Wisconsin, temporary disability compensation is available during vocational rehabilitation. When the injured worker, however, is temporarily unable to work only because of his participation in the rehabilitation, his compensation is limited to a forty week time period unless the administering agency finds additional training is necessary.¹³³

The other states that provide temporary disability compensation benefits during vocational rehabilitation are Idaho,¹³⁴ Louisiana,¹³⁵ and Nebraska.¹³⁶

3. *Only Temporary Total Disability Provided During Vocational Rehabilitation.* In addition to the schemes in the states just discussed, another nine statutory schemes provide some temporary disability compensation to the injured worker during his vocational rehabilitation. These states, however, only provide compensation for temporary total disabilities, and not for temporary partial disabilities. From the potential claimant's point of view, this scheme is clearly not as desira-

128. See e.g., *Allphin v. Market Basket*, Alaska Workers' Comp. Bd. No. 67-11-0011 (Feb. 25, 1983).

129. 86 Ill. 2d 489, 427 N.E.2d 1247 (1981).

130. *Id.* at 501, 427 N.E.2d at 1252.

131. FLA. STAT. §§ 440.15(2), .90(1) (West 1981 & Supp. 1983); *Cenvill Communities, Inc. v. Brown*, 409 So.2d 1147 (Fla. Dist. Ct. App. 1982).

132. OR. REV. STAT. § 656.268(1), (2), (5) (1983).

133. WIS. STAT. ANN. § 102.43(5) (West Supp. 1985).

134. IDAHO CODE § 72-450 (Supp. 1985).

135. LA. REV. STAT. § 23-1226(F) (West 1985).

136. NEB. REV. STAT. §§ 48-121(5), -162.01(4) (1984).

ble as one providing both types of compensation. Still, the schemes will provide some claimants with compensation during their rehabilitation that will allow them to concentrate more of their attention upon rehabilitation and less upon financial worries.

The states of California,¹³⁷ Hawaii,¹³⁸ Kansas,¹³⁹ Maryland,¹⁴⁰ South Dakota,¹⁴¹ Washington,¹⁴² and West Virginia¹⁴³ all provide temporary total disability compensation to injured workers during their vocational rehabilitation.

In effect, the Colorado statute also provides temporary total disability during vocational rehabilitation. The provision awards a weekly maintenance allowance to injured workers during their vocational rehabilitation. This allowance is equivalent in amount to the temporary total disability compensation the worker would receive were it not for the rehabilitation.¹⁴⁴

The FECWIA provides temporary total disability compensation to injured workers, with increases in compensation for dependents of the worker, during vocational rehabilitation. This sum is reduced, however, in the amount of the employee's earnings during his rehabilitation, other than earnings from employment undertaken pursuant to the rehabilitation itself.¹⁴⁵

4. *Permanent Disability Compensation Provided During Vocational Rehabilitation.* Five statutory schemes provide injured workers with permanent disability compensation during vocational rehabilitation.

Alabama somewhat ameliorates the hardship of not providing temporary disability compensation during vocational rehabilitation by providing permanent disability compensation under certain circumstances. The Alabama statute provides the worker with permanent partial disability compensation as soon as his injury has reached the point of medical stability regardless of his potential for vocational rehabilitation.¹⁴⁶ Under certain circumstances the statute also provides

137. CAL. LABOR CODE § 139.5 (West Supp. 1984).

138. HAWAII REV. STAT. § 386-25(c) (Supp. 1985).

139. KAN. STAT. ANN. § 44-510(g) (1981).

140. MD. ANN. CODE art. 101, § 36(a), (c) (Supp. 1983).

141. S.D. COMP. LAWS ANN. § 62-4-5.1 (1978).

142. WASH. REV. CODE § 51.32.095 (Supp. 1986).

143. W. VA. CODE § 23-4-9 (1981).

144. COLO. REV. STAT. § 8-49-101 (Supp. 1985).

145. 5 U.S.C. § 8104(b) (1982).

146. ALA. CODE § 25-5-57(a)(3) (Supp. 1985). For a discussion of the recognition that an injured worker is entitled to compensation during the "healing period" or time between the injury and the time of maximum medical recovery, see *Goodyear Tire & Rubber Co. v. Bradley*, 473 So. 2d 514 (Ala. Civ. App. 1985); *Butler v. Moretti-Harrah Marble Co.*, 431 So. 2d 1291 (Ala. Civ. App. 1983); *Defence Ordinance Corp. v. England*, 52 Ala. App. 565, 295 So. 2d 419 (Civ. App. 1974).

permanent total disability compensation regardless of the potential for vocational rehabilitation. The statute defines permanent total disability as "[t]he total and permanent loss of sight of both eyes, or the loss of both arms or shoulders, or any physical injury or mental impairment resulting from an accident which . . . permanently and totally incapacitates the employee from working at or being retrained for gainful employment."¹⁴⁷ Thus, where the worker's condition has reached medical stability, and he is at present totally disabled but it is uncertain whether his injury is permanent, the worker may be able to obtain continued compensation for total disability if he can demonstrate that his incapacity prevents him from being retrained for gainful employment.

Under the LHWCA, a claimant's medical condition and not his vocational status apparently determines whether he is disabled and therefore entitled to compensation. The Benefits Review Board has held that "[a] disability does not become permanent until [the] claimant has reached maximum medical improvement."¹⁴⁸ The Board has further held, "Granted that a purpose of the Act may be to rehabilitate injured workers, that is not the proper criteria for denying a claimant a permanent disability."¹⁴⁹ Apparently, where the claimant's medical condition has stabilized, he is entitled to compensation for permanent disability, even though potential vocational rehabilitation might significantly lessen his disability. The Board thus does not consider the potential for vocational rehabilitation in determining the extent of a claimant's compensable disability, even though rehabilitation might significantly reduce the claimant's loss of wage-earning capacity and even though refusal to undergo rehabilitation may have economic consequences arising from the employee's diminished earning capacity.¹⁵⁰

Although California provides the injured worker with temporary total disability during vocational rehabilitation as discussed above, the state goes one step further by also providing some permanent disability compensation. In *Tangye v. Beck & Co.*,¹⁵¹ the state Workers' Compensation Appeals Board held that an employee is entitled to permanent disability compensation while he is adjusting to a new job-site.¹⁵² Therefore, if the worker is undergoing vocational

147. ALA. CODE § 25-5-57(a)(4)(d) (Supp. 1985).

148. *Mendez v. Bernuth Marine Shipping, Inc.*, 11 BEN. REV. BD. SERV. (MB) 21, 28 (1979).

149. *Perry v. Stan Flowers Co.*, 8 BEN. REV. BD. SERV. (MB) 533, 537 (1978).

150. *Mendez*, 11 BEN. REV. BD. SERV. at 29. As to the difficulty of employers obtaining a rehabilitation evaluation, see the discussion of the LHWCA *infra* text accompanying notes 263-69.

151. 43 Cal. Comp. Cases 3 (Workers Comp. Appeals Bd. 1978).

152. *Id.* at 6. See CAL. LABOR CODE § 139.5 (West Supp. 1985).

rehabilitation while he is adjusting to this new job site, he is entitled to receive additional compensation.

In its decision in *Clark v. General Electric Co.*,¹⁵³ a New York court decided that an injured worker is eligible for permanent disability benefits when the worker is subject to a condition of continuing pain, continuing need for medical treatment, or his medical condition becomes settled.¹⁵⁴ Participation by the worker in a vocational rehabilitation program does not affect the rate of permanent disability compensation.¹⁵⁵

New Jersey provides that an injured worker may receive permanent total disability compensation for only 450 weeks. If the worker submits to vocational rehabilitation as ordered by the rehabilitation commissioner, however, he may continue to receive the permanent disability payments even after the 450 week period expires.¹⁵⁶

5. *Permanent Disability Compensation Not Provided During Vocational Rehabilitation.* Some states clearly do not provide permanent disability compensation during vocational rehabilitation. Other states have not clearly stated whether they will provide permanent disability compensation during vocational rehabilitation, making its acquisition uncertain.

Arkansas provides neither temporary disability nor permanent disability compensation to injured workers during vocational rehabilitation. In Arkansas, therefore, injured workers receive no financial compensation during rehabilitation other than maintenance and travel expenses. In upholding this result, an Arkansas court of appeals, in *Ryan v. NAPA*,¹⁵⁷ held that where a claimant is entitled to permanent partial disability benefits, the payment of such benefits must be suspended during vocational rehabilitation. Furthermore, not until completion of vocational rehabilitation does it become "the responsibility of the employer to resume and pay out the employee's permanent partial disability entitlement."¹⁵⁸

153. 68 A.D.2d 960, 414 N.Y.S.2d 766 (1979).

154. *Id.* at 961, 414 N.Y.S.2d at 767.

155. *Thomas v. Kornblum*, 17 A.D.2d 889, 233 N.Y.S.2d 634 (1962).

156. N.J. REV. STAT. § 34:15-12(b) (Supp. 1983).

157. 598 S.W.2d 443 (Ark. Ct. App. 1980).

158. *Id.* at 445; see also *Gray v. Armour & Co.*, 598 S.W.2d 434 (Ark. Ct. App. 1980). In *Gray*, a claimant who had reached medical stability argued that no permanent partial disability benefits should be paid while he was engaged in vocational rehabilitation, but rather that maintenance benefits should be awarded. The claimant further argued that the maintenance benefits awarded should reflect not only the additional cost to maintain his participation in his program, but also the cost of all other household and living expenses. 598 S.W.2d at 434. The Commission directed the employer to pay the costs of rehabilitation together with maintenance and travel expenses. The court of appeals approved the Commission's interpretation that

The portion of the Utah statute covering permanent disability compensation provides that a finding of permanent total disability is tentative until the worker is referred to, and cooperates with, the State Department of Education's Division of Vocational Rehabilitation.¹⁵⁹ If the Division certifies that the worker fully cooperated in efforts to rehabilitate himself and that he cannot be rehabilitated, then the worker is entitled to receive permanent total disability compensation.¹⁶⁰ Thus, the statute apparently requires that every worker make a complete but unsuccessful attempt at vocational rehabilitation before he becomes eligible for permanent total disability compensation. A worker is deemed automatically totally permanently disabled, however, if he has suffered the loss of complete function of "both hands, both arms, both feet, both legs, both eyes," or any combination of two of these different organs.¹⁶¹ Therefore, such an automatically designated worker could conceivably receive permanent total disability compensation while undergoing rehabilitation. Permanent partial disability compensation is available during rehabilitation in Utah because, unlike total disability, partial disabilities do not have to be certified.¹⁶²

In Colorado, permanent partial disability compensation is not available until after the worker completes his vocational rehabilitation program.¹⁶³ Because, as discussed earlier, Colorado does provide a weekly allowance equivalent to temporary total disability¹⁶⁴ at least some Colorado workers are compensated during their rehabilitation.

In Louisiana, permanent disabilities cannot be determined while a worker is participating in a vocational rehabilitation program;¹⁶⁵ therefore, no permanent disability compensation award can be made until the rehabilitation is complete. Louisiana does provide, however, temporary total and temporary partial disability compensation during rehabilitation for injured workers as discussed earlier.¹⁶⁶

"[r]easonable maintenance means all (reasonable) additional living expenses incurred by the claimant as a result of pursuing his program of rehabilitation." *Id.* at 435.

159. UTAH CODE ANN. §§ 35-1-67 (Supp. 1985).

160. *Id.*

161. *Id.*

162. *Id.* Because, in addition to not providing permanent total disability benefits during vocational rehabilitation, Utah also does not provide any temporary disability benefits to the worker during vocational rehabilitation. see *supra* note 120, it appears unlikely that a worker will receive the compensation he needs in order to concentrate on his rehabilitation.

163. COLO. REV. STAT. § 8-49-101(5) (Supp. 1985).

164. See *supra* note 144 and accompanying text.

165. LA. REV. STAT. § 23-1226(G) (West 1985).

166. See *supra* note 135.

6. *Other Statutory Schemes Providing Compensation During Vocational Rehabilitation.* Three states expressly provide that the availability of disability compensation is determined without regard for the potential impact of vocational rehabilitation. An additional three states provide alternative systems to the previously discussed disability compensation schemes.

The Michigan Court of Appeals, in *Frammolino v. Richmond Products*,¹⁶⁷ decided that vocational rehabilitation does not affect an injured worker's right to disability compensation.¹⁶⁸ This holding suggests that a worker can receive either permanent or temporary disability compensation while he is participating in vocational rehabilitation if he otherwise meets the established eligibility criteria for those benefits.

Similarly, in Oklahoma an injured worker is entitled to the same weekly benefits during vocational rehabilitation to which he would otherwise be entitled were he not undergoing rehabilitation.¹⁶⁹ Rhode Island also provides that compensation payments shall not be diminished or terminated while a worker participates in an approved vocational rehabilitation program.¹⁷⁰

The Kentucky legislature has provided that during the period a worker is eligible for permanent total disability benefits and is actively pursuing Board ordered vocational rehabilitation, his disability benefits are to be calculated by taking eighty percent of his average weekly wage¹⁷¹ and multiplying it by the percentage of his disability as determined in the Kentucky workers' compensation statute.¹⁷² This provision serves as an incentive to participate in rehabilitation since the disability benefits of workers not participating in vocational rehabilitation are calculated using only sixty-six and two-thirds percent of the average weekly wage.¹⁷³

Under Minnesota's alternative scheme, during vocational rehabilitation the injured worker receives up to 156 weeks of compensation in an amount equaling up to 25 percent of the benefits otherwise payable to him as disability compensation.¹⁷⁴

North Dakota has enacted a similar statute awarding the worker a rehabilitation allowance in lieu of disability compensation in order to effect the vocational rehabilitation. This amount can be up to 125 per-

167. 79 Mich. App. 18, 260 N.W.2d 908 (1978).

168. *Id.* at 28, 260 N.W.2d at 914.

169. OKLA. STAT. ANN. tit. 85, § 16(D) (West Supp. 1985).

170. R.I. GEN. LAWS § 28-33-41 (1983).

171. This figure may not exceed one-hundred percent of the state's average weekly wage. KY. REV. STAT. § 342.715 (1985).

172. *Id.*

173. *Id.* § 342.730(1).

174. MINN. STAT. ANN. § 176.102(11) (West Supp. 1985).

cent of the compensation that the worker would otherwise be entitled to receive.¹⁷⁵ The extra benefits provided by Kentucky, Minnesota, and North Dakota to workers undergoing vocational rehabilitation serve as an incentive for workers to undertake rehabilitation and hopefully escape the benefit roles entirely once the rehabilitative process is completed.

C. Maintenance Benefits

1. *Purpose and Scope of Maintenance Benefits.* The purpose of maintenance benefits is to supplement other compensation payments, thereby providing the claimant with funds needed to offset the increased living expenses that a disabled worker may incur during rehabilitation.¹⁷⁶ In light of this purpose, the concepts of disability and wage loss relevant to other types of compensation are not applicable to maintenance benefits.¹⁷⁷

Maintenance payments promote vocational rehabilitation by helping to relieve the claimant of financial distractions and worries.¹⁷⁸ Ideally, such payments should act as an incentive for the employee to complete his vocational rehabilitation program successfully by enabling him to maintain his normal standard of living while participating in the program.¹⁷⁹

The District of Columbia,¹⁸⁰ fourteen states,¹⁸¹ the FECWIA, and the LHWCA all offer maintenance benefits during vocational re-

175. N.D. CENT. CODE § 65.05.1-06 (1985).

176. See, e.g., *Model Laundry & Dry Cleaning v. Simmons*, 596 S.W.2d 337, 339 (Ark. Ct. App. 1980).

177. *Id.*

178. See ARK. STAT. ANN. § 81-1310(f) (Supp. 1985), which provides that "an employee who is entitled to receive compensation benefits for permanent disability shall be paid reasonable expenses of travel and maintenance and other necessary costs of a program of vocational rehabilitation." See also ARIZ. REV. STAT. ANN. § 23-1065(A)(1) (1983), which provides that the State Industrial Commission may make additional awards as necessary "to enable injured employees to accept the benefits of any law of the state, or of the United States, or both jointly, for promotion of vocational rehabilitation of persons disabled in industry."

179. See Comment, *Vocational Rehabilitation in the Workers' Compensation System*, 33 ARK. L. REV. 723, 739 (1980).

180. D.C. CODE ANN. §§ 1-624.11(b), 36-307(a) (1981).

181. See ALASKA STAT. § 23.30.041(g) (Supp. 1985); ARIZ. REV. STAT. ANN. § 23-1065(A)(1) (1983); CAL. LABOR CODE § 139.5(c) (West Supp. 1986); ILL. REV. STAT. ch. 48, § 138.8(a) (Supp. 1983); IOWA CODE ANN. § 85.70 (West Supp. 1982); ME. REV. STAT. ANN. tit. 39, § 87 (Supp. 1985); MICH. COMP. LAWS ANN. § 418.319 (West. 1985); MINN. STAT. ANN. § 176.102 (West Supp. 1984); MISS. CODE ANN. § 71-3-19 (1972 & Cum. Supp. 1985); MONT. CODE ANN. §§ 39-71-1003, -1004 (1983); N.M. STAT. ANN. § 52-1-50 (Supp. 1983); N.Y. WORK. COMP. LAW § 15(3)(v)(9) (McKinney Supp. 1983); N.D. CENT. CODE § 65-05.1-05 (1985); OHIO REV. CODE ANN. § 4121.63 (Page Supp. 1982).

habilitation.¹⁸² The maintenance benefits provided by state statutes range from ten dollars per week in Mississippi¹⁸³ to an amount not exceeding fifty dollars per week in Montana¹⁸⁴ and the District of Columbia.¹⁸⁵ In other states, an employer may be required to provide claimants with such benefits as the "reasonable expenses of travel and maintenance,"¹⁸⁶ "additional living expenses necessitated by the rehabilitation program,"¹⁸⁷ or "all maintenance costs and expense[s]" incidental to vocational rehabilitation.¹⁸⁸ Alaska law specifically provides that a claimant who demonstrates "extreme financial hardship" may receive two hundred dollars per month for maintenance.¹⁸⁹

2. *Availability of Maintenance Benefits When Residence Away from Home is Required.* Twenty states,¹⁹⁰ including Alaska, specifically provide for the payment of all or some portion of the reasonable cost of room, board and travel when a worker is required to reside away from his customary residence to pursue vocational rehabilitation. Another six states do not have such separate provisions, but nevertheless

182. See *supra* notes 124-75 for a discussion of the availability of other benefits during vocational rehabilitation.

183. MISS. CODE ANN. § 71-3-19 (1972 & Cum. Supp. 1985).

184. MONT. CODE ANN. § 39-71-1003 (1983).

185. D.C. CODE ANN. § 36-307(a) (1981).

186. ARK. STAT. ANN. § 81-1310(f) (Supp. 1985).

187. CAL. LAB. CODE § 139.5(c) (West Supp. 1986).

188. ILL. ANN. STAT. ch. 48, § 138.8(a) (Smith-Hurd Supp. 1985).

189. ALASKA STAT. § 23.30.041(g) (1984). The theory and purpose behind each state's formulation of maintenance benefits varies widely. For example, New Mexico requires employers to pay up to \$3,000 as may be deemed necessary in the discretion of the trial court for the claimant's "board, lodging, travel and other expenses and for the maintenance of his family during the period of rehabilitation." N.M. STAT. ANN. § 52-1-50 (Supp. 1985). In contrast, Arkansas courts have held that maintenance provisions are not designed to maintain a claimant's household during rehabilitation. *Gray v. Armour & Co.*, 598 S.W.2d 434, 436 (Ark. Ct. App. 1980). In North Dakota, the Workmen's Compensation Bureau may award up to \$5,000 to each claimant upon his successful completion of a rehabilitation contract with the Bureau "for the actual expenses of relocation or remodeling of living and business facilities." N.D. CENT. CODE § 65-05.1-.06 (1985).

190. ALA. CODE § 25-5-57 (1975); ALASKA STAT. § 23.30.041 (1983); ARK. STAT. ANN. § 81-1310(f) (Supp. 1985); *Gray v. Armour & Co.*, 598 S.W.2d 434, 435 (Ark. Ct. App. 1980); *Mosely v. Delaware*, 372 A.2d 178 (Del. 1977); FLA. STAT. ANN. § 440.49(D) (West Supp. 1985); GA. CODE ANN. § 34-9-200.1(a) (Supp. 1985); KAN. STAT. ANN. § 44-510(f) (1981); KY. REV. STAT. § 342-710 (1983); LA. REV. STAT. § 23-1226(E) (West 1985); MD. ANN. CODE art. 101, § 36(d) (Supp. 1985); MASS. GEN. LAWS ANN. ch. 152, §§ 30, 30B (1976); MINN. STAT. ANN. § 176.102(g) (West Supp. 1985); NEB. REV. STAT. § 48-162.01(4) (1984); N.H. REV. STAT. § 281:21-b (Supp. 1985); OKLA. STAT. ANN. tit. 85, § 16(D) (West Supp. 1985); R.I. GEN. LAWS § 28-38-41 (Supp. 1985); S.C. CODE ANN. § 42-13-90(b) (Law. Co-op. 1977); VT. STAT. ANN. tit. 21, § 641(b) (Supp. 1985); WASH. REV. CODE § 51.32.110(3) (Supp. 1985); WIS. STAT. ANN. § 102.61 (West Supp. 1985).

cover these costs under provisions relating to maintenance or vocational rehabilitation services.¹⁹¹ Two states provide coverage only for transportation.¹⁹² This leaves twenty-two states and the District of Columbia with no specific statutory provisions authorizing maintenance away from the home,¹⁹³ and seventeen states with no maintenance provisions at all.¹⁹⁴

D. Miscellaneous Benefits

Individual state and federal programs have placed different emphasis on specific concerns of vocational rehabilitation resulting in a wide variety in benefits available to participants in particular rehabilitation programs. This wide variety is readily demonstrated by a brief examination of some of the special provisions found in a few statutory schemes.

In Oregon, the Handicapped Persons' Civil Rights Act¹⁹⁵ requires that injured workers must, upon demand, be reemployed by their former employer in available and "suitable work."¹⁹⁶ In *Carney v. Guard Publishing Co.*,¹⁹⁷ the Oregon Court of Appeals construed "suitable work" to mean a position that the injured worker could perform without substantial training or rehabilitation.¹⁹⁸ The court observed that while injured workers "occupy a preferred hiring position and *must* be reemployed if suitable positions are available, the Act does not require an employer to substitute an injured employee for a noninjured one, or to create positions specifically for previously injured workers."¹⁹⁹ Moreover, the employer's duty to exercise preference in hiring the injured worker does not last indefinitely. It expires once the employer has offered the injured worker suitable

191. See ARIZ. REV. STAT. ANN. § 23-1065(A)(1) (1985); CAL. LAB. CODE § 139.5(c) (West Supp. 1986); ILL. REV. STAT. ch. 48, § 138.8 (Supp. 1985); ME. REV. STAT. ANN. tit. 39, § 87 (Supp. 1985); MICH. COMP. LAWS ANN. § 418.319 (Supp. 1983); N.M. STAT. ANN. § 52-1-50 (Supp. 1983).

192. See COLO. REV. STAT. § 8-49-101(i)(a) (Supp. 1985); MONT. CODE ANN. § 39-71-1003 (1983).

193. D.C., Iowa, Mississippi, New York, North Dakota, Ohio, and those states listed in note 194 *infra* do not provide their residents with maintenance payments covering the additional expenses of away from home rehabilitation.

194. Connecticut, Hawaii, Idaho, Indiana, Missouri, Nevada, New Jersey, North Carolina, Oregon, Pennsylvania, South Dakota, Tennessee, Texas, Utah, Virginia, West Virginia, and Wyoming have no maintenance statutes.

195. OR. REV. STAT. §§ 659.400-435 (1983).

196. *Id.* § 659.420(1).

197. 48 Or. App. 147, 616 P.2d 548, *modified*, 48 Or. App. 927, 630 P.2d 867 (1980).

198. *Id.* at 155, 616 P.2d at 563.

199. *Id.* at 152, 616 P.2d at 552 (emphasis in original).

employment.²⁰⁰

Washington's statutory scheme represents another interesting example of the great variety found in vocational rehabilitation. The Washington Industrial Insurance Statute requires an employer, either through the state insurance fund or as a self-insurer, to pay the cost of child or dependent care in addition to the costs of books, tuition, fees, supplies, equipment, and transportation.²⁰¹ Furthermore, the statute declares, "Modification of the injured worker's previous job is recognized as a desirable method of returning the injured worker to suitable gainful employment."²⁰² In order to help employers meet the costs of job modification and to encourage them to modify jobs for the retraining or hiring of workers with disabilities caused by work-related injuries, the Supervisor of Industrial Insurance is authorized under the Washington statute to pay job modification costs from a special fund in an amount not to exceed \$5000 per worker for each job modification.²⁰³

As a final example, in Minnesota, the Workers' Compensation Division provides vocational rehabilitation services to dependent surviving spouses who need rehabilitation assistance in order to become self-supporting. Unlike injured employees, however, surviving spouses approved for vocational rehabilitation are not entitled to receive extra compensation during rehabilitation.²⁰⁴

V. SEVEN WORKERS' COMPENSATION VOCATIONAL REHABILITATION SCHEMES

A brief outline of the workers' compensation vocational rehabilitation statutes in Alaska, Tennessee, North Dakota, Michigan, the FECWIA and LHWCA, and the veterans' program illustrates the great variety among vocational rehabilitation programs, not only in terms of the benefits afforded and the procedures required by each program, but also, in a more basic sense, in terms of the philosophies underlying these programs. Naturally, the specific goals and purposes behind a particular program will strongly dictate the form that program takes in actual implementation. These schemes are discussed and compared below in detail.

200. *Id.* On the worker's petition for reconsideration on the grounds that the employer had abandoned its assignment of error on the question of what constitutes suitable employment, the court withdrew the portion of its former opinion addressing that issue. 48 Or. App. 927, 929, 630 P.2d 867, 868 (1980). *Cf.* Williams v. Waterways Terminal Co., 69 Or. App. 388, 686 P.2d 441 (1984) (discharge of worker, whether lawful or unlawful, terminates reinstatement rights).

201. WASH. REV. CODE ANN. § 51.32.095 (Supp. 1986).

202. *Id.* § 51.32.250.

203. *Id.*

204. MINN. STAT. ANN. §§ 176.102(1a), .102(11) (West Supp. 1985).

A. Alaska

In 1982, Alaska added a comprehensive vocational rehabilitation section to its workers' compensation statute.²⁰⁵ The amended statute authorizes the Alaska Workers' Compensation Board to employ a rehabilitation administrator who is charged with implementing the statute's vocational rehabilitation provisions.²⁰⁶

Under the new Alaska statute, if a worker suffers a permanent disability that precludes his return to "suitable gainful employment," he is entitled to be fully evaluated by a qualified rehabilitation professional within ninety days after the date of his injury for participation in a rehabilitation plan.²⁰⁷ If the medical, physical, or emotional state of the worker prevents a full evaluation, a rehabilitation professional must prepare a preliminary evaluation setting forth (1) the factors precluding a full evaluation, (2) an indication as to when the worker will be ready for a full evaluation, and (3) any other information that can be ascertained at the time of the preliminary evaluation.²⁰⁸

A full evaluation of the worker must include the following determinations: whether the rehabilitation plan will enable the worker to return to "suitable gainful employment," whether the worker could return to employment without the rehabilitation plan, the likely cost of the plan, and an estimate of whether the continuing benefits and compensation due the worker after conclusion of the plan are likely to be more or less than if the plan were not implemented.²⁰⁹

The Alaska statute establishes a descending order of preference among five categories of rehabilitation plans:

- (1) prosthetic devices and training that enables work at the same or similar occupation as at the time of injury;
- (2) work site modification and vocational training for the same or similar occupation;
- (3) on-the-job training for a new occupation;
- (4) vocational training for a new occupation; and
- (5) academic training for a new occupation if the educational level is attainable by the employee and employment in the new occupation is believed to be available to the employee in his community at the time academic training is completed.²¹⁰

If an employee can return to suitable gainful employment upon com-

205. Act of July 1, 1982, ch.93, § 3, 1982 Alaska Sess. Laws 498 (codified at ALASKA STAT. § 23.30.041 (1984)).

206. ALASKA STAT. § 23.30.041(a)-(b) (1984). The rehabilitation administration is also responsible for studying physical and vocational rehabilitation on a continuing basis. *Id.*

207. *Id.* § 23.30.041(c).

208. *Id.*

209. *Id.* § 23.30.041(d).

210. *Id.* § 23.30.041(e).

pletion of a rehabilitation plan of higher preference, then the employer need not offer a more costly plan of lower preference.²¹¹

The employer and worker may work together to develop a particular vocational rehabilitation plan. If they cannot agree upon a plan, however, either the employer or the worker may submit a plan to the rehabilitation administrator for approval. The administrator must approve, modify, or deny a plan within fourteen days after it has been submitted. If dissatisfied with the result, any party may seek review of the administrator's decision within ten days of its issuance.²¹²

Vocational rehabilitation services are available to each participant for up to thirty-seven weeks, and upon a determination that special circumstances exist, the rehabilitation administrator may extend services for an additional thirty-seven weeks.²¹³ Of course, the employer or carrier may voluntarily provide services on an extended basis, if either wishes to do so.²¹⁴ The employer must pay (1) all costs of an approved vocational rehabilitation plan, (2) temporary disability compensation throughout the process, and (3) the reasonable cost of board, lodging, and travel if rehabilitation requires the worker to reside away from his customary residence.²¹⁵

If the worker refuses to participate in a vocational rehabilitation program approved by the administrator or agreed to by the parties, he will forfeit his disability compensation for the period of refusal.²¹⁶ Should the worker subsequently begin participating in the proposed plan within two months of the date of his refusal, successfully complete it, and then obtain employment for thirty consecutive business days following the completion of the plan, the worker will receive a lump sum payment equal to one quarter of the compensation previously forfeited.²¹⁷

The Alaska rehabilitation provisions also clarify the meaning of the phrase "restored to suitable gainful employment" by specifying that the worker shall be returned to work in the following order of preference:

- (1) work at the same or similar occupation with the same employer or an employer in the same industry as the employer at the time of injury; (2) an occupation using essentially the same skills as the job at the time of injury but in a different industry; (3) an occupation using different skills but using the employee's academic achievement level at the time of injury; or (4) an occupation requiring an

211. *Id.*

212. *Id.* § 23.30.041(f).

213. *Id.* § 23.30.041(g).

214. *Id.*

215. *Id.*

216. *Id.* § 23.30.041(h).

217. *Id.*

academic achievement level that is different from that attained at the time of injury.²¹⁸

In addition, the statute defines "suitable gainful employment," in part, as employment that "offers an opportunity to restore the individual as soon as practical to a remunerative occupation and as nearly as possible to the individual's gross weekly earnings as determined at the time of injury."²¹⁹

B. Tennessee

In contrast to the Alaska statute, the Tennessee Workmen's Compensation Act²²⁰ contains only one provision relating to vocational rehabilitation. That provision authorizes the Tennessee Commissioner of Labor to cause the Division of Workers' Compensation to refer all "feasible cases for vocational rehabilitation" to the state Department of Education.²²¹ The Tennessee Supreme Court criticized the state's lack of comprehensive vocational rehabilitation legislation in its 1974 decision in *Mayes v. Genesco, Inc.*²²² In *Mayes*, the court ruled that in the absence of any reference in the Workmen's Compensation Act to vocational rehabilitation, and in the absence of a comprehensive vocational rehabilitation program available to all disabled workers, the state's trial courts were not required to consider the vocational rehabilitation potential of an employee as a factor in assessing the extent of his disability.²²³ The court noted:

Attempting to assess potential, whether it be vocational rehabilitation potential, or the potential of any other project is at most speculative. One can only guess that an individual will achieve a desired result because others similarly situated have done so. However, no guarantee can be made. For this reason, we conclude that vocational rehabilitation potential need not be considered by the Trial Court in assessing the extent of the disability.²²⁴

The Tennessee Supreme Court went on to express displeasure in its own conclusion:

It is desirable to have the trial courts consider vocational rehabilitation as opposed to considering vocational rehabilitation potential when assessing the extent of an employee's disability. This cannot be accomplished, however, until a procedure is established whereby the court would not have to make its final disability rating until after the employee has completed a rehabilitation program.²²⁵

218. *Id.* § 23.30.041(i).

219. *Id.* § 23.30.265 (28).

220. TENN. CODE ANN. §§ 50-6-101 to -410 (1983 & Supp. 1985).

221. *Id.* § 50-6-233(b) (Supp. 1985).

222. 510 S.W.2d 882 (Tenn. 1974).

223. *Id.* at 884.

224. *Id.*

225. *Id.*

In a subsequent opinion,²²⁶ however, without reference to *Mayes*, the Tennessee Supreme Court approved the admission of testimony concerning a vocational rehabilitation evaluation. The court stated that the testimony of a vocational examiner concerning tests he had conducted was "relevant to the issue of industrial disability and is an additional way to bring home to the trier of fact the impact of the injury on the earning capacity of the [worker]."²²⁷

Despite the lack of comprehensive state rehabilitation legislation as well as the court's confusing signals on the use of vocational rehabilitation, Tennessee does have a separate vocational rehabilitation statute designed to allow the state to obtain the full benefits of federal vocational rehabilitation laws. In the Vocational Rehabilitation Law of Tennessee,²²⁸ which contains provisions applicable to all persons in the state needing vocational rehabilitation, the Tennessee legislature acted to secure compliance with the provisions of the Federal Rehabilitation Act of 1973, which provides funds to state vocational rehabilitation programs meeting the standards specified in the Act.²²⁹ Section 49-11-606(a) provides, "The state board of education shall formulate a plan of cooperation in accordance with the provisions of federal acts and of this part [the Vocational Rehabilitation Law of Tennessee] with respect to the administration of the worker's compensation or liability laws."²³⁰

Section 49-11-602 contains a comprehensive list of definitions applicable to the state's vocational rehabilitation law. These definitions differ from those found in workers' compensation vocational rehabili-

226. *Brown Shoe Co. v. Pipes*, 581 S.W.2d 140 (Tenn. 1979).

227. *Id.* at 142.

228. TENN. CODE ANN. §§ 49-11-601 to -614 (1983).

229. Pub. L. No. 93-112, 87 Stat. 357 (1973) (establishing Rehabilitation Services Administration and providing for joint federal-state funding of vocational rehabilitation programs meeting specified standards). See TENN. CODE ANN. § 49-11-605(a) (1983). Section 49-11-605 authorizes the state board to cooperate fully with the federal government:

(a) The state board, through the division, shall cooperate, pursuant to agreements with the federal government in carrying out the purposes of any federal statutes pertaining to vocational rehabilitation and is authorized to adopt such methods of administration as are found by the federal government to be necessary for the proper and efficient operation of such agreements or plans for vocational rehabilitation and to comply with such conditions as may be necessary to secure the full benefits of such federal statutes.

(b) Upon designation by the state board, the division may perform functions and services for the federal government relating to individuals under a physical or mental disability, such services and such individuals to be in addition to those enumerated in this part and part 7 of this chapter [authorizing establishment of vocational training centers].

Id. § 49-11-605.

230. *Id.* § 49-11-606(a).

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tation statutes. The Tennessee program covers a wider range of people and attempts to meet broader social problems than a program focused solely on the work-disabled. The term "handicapped individual," for example,

means an individual . . . under a physical or mental disability which constitutes a substantial handicap to employment, but which is of such a nature that appropriate vocational rehabilitation services may reasonably be expected to render him able to engage in a remunerative occupation, or to . . . substantially achieve such ability of independent living as to dispense with the need of institutional care or . . . an attendant at home.²³¹

Unlike its meaning in the Tennessee Workmen's Compensation Act,²³² "remunerative occupation" in the context of Tennessee's joint federal-state vocational rehabilitation program means "employment as an employee or self-employed, practice of a profession, homemaking or farm and family work for which payment is in kind rather than cash, sheltered employment, and home industry or other homebound work of a remunerative nature."²³³

"Vocational rehabilitation services" extend to diagnostic services and transportation incidental to such services including testing services, training, guidance, placement, maintenance not exceeding the estimated costs of subsistence during vocational rehabilitation, occupational licenses, tools, equipment, initial stocks and supplies, transportation, and physical rehabilitation.²³⁴ The term "maintenance," however, carries a meaning similar to its meaning in other vocational rehabilitation provisions.²³⁵

Vocational rehabilitation to eligible handicapped individuals²³⁶ is

231. *Id.* § 49-11-602(6).

232. Namely, work of the same or similar nature, yielding approximately the same wages and opportunities. *See* TENN. CODE ANN. §§ 50-6-101 to -410 (1983 & Supp. 1985).

233. *Id.* § 49-11-602(12).

234. *Id.* § 49-11-602(15).

235. *See supra* text accompanying notes 176-89. "Maintenance" in Tennessee law means "the provision of money to cover a handicapped individual's necessary living expenses and health maintenance essential to achieving his vocational rehabilitation." TENN. CODE ANN. § 49-11-602(7).

236. An "eligible handicapped individual" is one "who is a bona fide resident of the state of Tennessee at the time of his application, whose vocational rehabilitation is determined feasible by the division of vocational rehabilitation," and who, "after full consideration of his eligibility for any similar benefit by the way of pension, compensation, and insurance," needs financial aid to participate in vocational rehabilitation. *Id.* § 49-11-602(3). *Cf. id.* § 49-11-610, stating that vocational rehabilitation services shall be provided in accordance with policy promulgated by the State Board of Education to any handicapped individual whose vocational rehabilitation can be satisfactorily attained and who is eligible therefor under the terms of agreement with the federal government.

funded through state appropriations, federal grants, and donations from private and public sources.²³⁷ The state board is authorized to contract with appropriate federal agencies to secure the maximum benefits available under the federal program.

As even a brief overview of the two Tennessee statutes reveals, if an industrially disabled worker in Tennessee is to obtain vocational rehabilitation benefits, he must obtain them through the federal/state vocational rehabilitation framework.²³⁸ Unlike Alaska, which provides vocational rehabilitation within its workers' compensation statute, Tennessee forces the disabled worker to go completely outside workers' compensation for vocational rehabilitation opportunities.²³⁹

C. North Dakota

North Dakota law evidences yet another approach to vocational rehabilitation. The state provides for comprehensive vocational rehabilitation services in its workers' compensation act.²⁴⁰ The North Dakota legislature's policy statement concerning its workers' compensation statute declares that

disability caused by injuries in the course of employment and disease fairly traceable to the employment create a burden upon the health and general welfare of the citizens of this state and upon the prosperity of this state and its citizens.

237. *Id.* §§ 49-11-607 to -608.

238. *See supra* notes 228-37.

239. Even though forced to go outside state workers' compensation legislation to obtain relief, the industrially disabled who participate in federal/state programs may benefit from the favorable federal tax treatment their employers receive for participating in these programs. Section 51 of the Internal Revenue Code, I.R.C. § 51 (1985), establishes a credit for employers that hire new employees with a substantial handicap to employment and who have been referred to the employer upon or while receiving vocational rehabilitation services pursuant to a federal/state program or the veterans program. Under Section 51, the employer receives a credit equal to fifty percent of the first \$6,000 of the worker's qualified first-year wages and twenty-five percent of the first \$6,000 of the worker's qualified second-year wages. *Id.* § 51(a)-(b). The wages for which the employer already receives credit may not, however, include any amounts paid for any period to an individual for whom the employer receives federally funded payments for on-the-job training. *Id.* § 51(c)(2). The Internal Revenue Code specifically excludes from the group covered by the credit those individuals who have been previously employed by the employer at any time when they were not members of a group otherwise qualified for Section 51 treatment. *Id.* § 51(i)(2). This limitation clearly represents a policy directly contrary to that of the workers' compensation statutes, which seek to encourage the rehiring of the same worker. *See also* Section 190 of the Internal Revenue Code, which provides that a taxpayer may elect to deduct up to \$35,000 of the cost of making any facility or public transportation vehicle owned or leased by the taxpayer in connection with his business more accessible to and usable by handicapped and elderly individuals. 26 U.S.C.A. § 190 (West 1978 & Supp. 1985).

240. N.D. CENT. CODE §§ 65-05-07, 65-05.1-01 to .1-07 (1985).

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It is the purpose of this chapter to provide for the health and welfare by ensuring to workmen's compensation claimants otherwise covered by this title, services, so far as possible, necessary to assist the claimant and the claimant's family in the adjustments required by the injury to the end that the claimant may receive comprehensive rehabilitation services. Such services shall include medical, psychological, economic, and social rehabilitation.²⁴¹

The North Dakota Workmen's Compensation Bureau provides rehabilitation services out of a fund derived from the state surplus fund.²⁴²

The North Dakota statute directs the Bureau to appoint a director of rehabilitation services and other staff members to carry out the following duties: (1) to fulfill the purposes of the rehabilitation statute, (2) to cooperate with federal and state agencies charged with vocational rehabilitation, (3) to make determinations on individual claims concerning the extent and duration of the Bureau's involvement in providing rehabilitation services, (4) to enter into agreements and promulgate such rules and regulations as may be advantageous in carrying out the purpose of the statute, and (5) to provide such rehabilitation services and allowances as may be most beneficial to the claimant within the limitations of the statute.²⁴³

The North Dakota statute specifies that an injured worker has a responsibility "to seek, obtain, and retain reasonable and substantial employment in order to reduce the period of temporary disability to a minimum."²⁴⁴ If, as a direct result of his injury, the worker is unable to obtain substantial employment, he must promptly notify the Bureau and thereafter be available for an evaluation of his rehabilitation potential. Once the Bureau determines that a rehabilitation program is necessary and feasible, the injured worker must make himself available for rehabilitation services.²⁴⁵

If an injured worker fails to comply with the Bureau's determination without reasonable cause, the Bureau must, by formal order, discontinue all lost-time worker's compensation benefits during the period of non-compliance.²⁴⁶ If the worker fails to comply for a period of six months after the order discontinuing benefits becomes final, "the bureau shall have no further jurisdiction in awarding any further temporary total, temporary partial, permanent total, or rehabilitation benefits."²⁴⁷ The non-complying worker thus loses all past and potential benefits.

241. *Id.* § 65-05.1-01.

242. *Id.* § 65-05-07.

243. *Id.* § 65-05.1-02.

244. *Id.* § 65-05.1-04.

245. *Id.*

246. *Id.*

247. *Id.*

The North Dakota statute is unique in providing that when the Bureau of Workmen's Compensation determines that it is necessary to provide a rehabilitation program to a claimant, it must enter into a "rehabilitation contract" with the claimant. The contract must address, but is not limited to, the following matters:

1. A description of the rehabilitation program to include the actual time, place, cost, and other significant data involved in the particular program.
2. The equipment and tools necessary for the training and vocational performance and the ownership thereof.
3. The amount of rehabilitation allowance to be paid to the claimant and the manner in which the allowance is to be disbursed.
4. The claimant's faithful performance of the terms of the contract.²⁴⁸

The Bureau must also provide attorney's fees from its general fund to the claimant's attorney for his role in effecting the contract.²⁴⁹

In order to implement the purposes of the contract, the Bureau may award the claimant a "rehabilitation allowance" in lieu of temporary total, temporary partial, and permanent total benefits, limited to the amount and used for the purpose set forth in the rehabilitation contract.²⁵⁰ This allowance may not exceed one hundred and twenty-five percent of the amount of the total weekly compensation and dependent benefits that the claimant is otherwise entitled to receive.²⁵¹ Upon the claimant's successful completion of his contract, the Bureau may award him an additional sum to be used to defray the actual expenses of any relocation or remodeling of living and business facilities.²⁵² This amount shall not exceed an aggregate amount of \$5000 over the remainder of the claimant's life, regardless of any claim the worker may subsequently bring.²⁵³

D. Michigan

As a heavily industrialized state, Michigan serves as a useful contrast to Alaska. When, as a result of a work-related injury, a worker is unable to perform work for which he has previous training or experience, section 418.319 of the Michigan Worker's Disability Compensation Act of 1969²⁵⁴ entitles him to such vocational rehabilitation services, including retraining and job placement, as may be reasonably

248. *Id.* § 65-05.1-05.

249. *Id.* The claimant's attorney's fees are paid according to a schedule established by the Bureau. *Id.*

250. *Id.* § 65-05.1-06.

251. *Id.*

252. *Id.*

253. *Id.*

254. MICH. COMP. LAWS ANN. §§ 418.101 to -.419 (West 1985 & Supp. 1985).

necessary to restore him to useful employment. The worker need not be totally disabled to qualify for rehabilitation services. Thus, in *Barrett v. Bohn Aluminum & Brass Co.*,²⁵⁵ a Michigan court of appeals upheld a vocational rehabilitation program even though the claimant was able to perform some work without rehabilitation. The court did this in order to enable him to obtain "the skills necessary to again compete with the able-bodied in the economic marketplace."²⁵⁶

If the employer does not voluntarily offer vocational rehabilitation services or the worker does not voluntarily accept them, the Director of the Michigan Bureau of Workers' Compensation may refer the employee to a bureau-approved facility for evaluation.²⁵⁷ This referral may be made upon the director's own motion or upon the application of the worker, the employer, or the employer's compensation carrier.²⁵⁸ Upon receiving an evaluation report on the need for a rehabilitation program and the kind of service or training necessary and appropriate to render the worker fit for a remunerative occupation, the Director may then order that the recommended services and treatment be provided at the employer's expense.²⁵⁹

Several additional aspects of the Michigan statute are noteworthy. For example, the Director may also order the employer to pay the costs of transportation and any "extra and necessary expenses" arising out of the worker's program during the period of vocational rehabilitation.²⁶⁰ Additionally, the award of vocational rehabilitation benefits does not affect the worker's right to disability benefits.²⁶¹ Benefits are limited in duration to fifty-two weeks, but may be extended for an additional fifty-two weeks by special order of the Director after making a review of the worker's progress in his program.²⁶²

255. 69 Mich. App. 636, 245 N.W.2d 147 (1976).

256. *Id.* at 642, 245 N.W.2d at 151. Compare *Barrett, id.* with *Ayoub v. Ford Motor Co.*, 101 Mich. App. 740, 300 N.W.2d 508 (1980). In *Ayoub*, the court found that the worker had acted in bad faith in leaving "favored employment" when the nature of the work changed. The worker cited an unrelated physical ailment as his reason for terminating his employment. He then returned to college and, nearly a year later, claimed workers' compensation benefits and vocational rehabilitation services at the expense of his former employer. The court held that Ayoub was not entitled to a vocational rehabilitation program because he had failed to follow the statutory application procedure, and that his enrollment at a university was not a rehabilitative program within the meaning of the statute. 101 Mich. App. at 746-47, 300 N.W.2d at 510-11.

257. MICH. COMP. LAWS ANN. § 418.319(1) (West 1985).

258. *Id.*

259. *Id.*

260. *Id.*

261. *Frammolino v. Richmond Products*, 79 Mich. App. 18, 28, 260 N.W.2d 908, 914 (1977).

262. MICH. COMP. LAWS ANN. § 418.319(1) (West 1985).

E. The Longshoremen's and Harbor Workers' Compensation Act and the Federal Employees' Compensation for Work Injuries Act

Federal workers' compensation programs affect a substantial number of those persons who are injured in the course of their employment.

The LHWCA covers disability resulting from an injury occurring on the navigable waters of the United States and adjoining piers, wharfs, dry docks, terminals, building ways, marine railways, or other adjoining areas customarily used by employers in loading, unloading, repairing, or building vessels.²⁶³

Section 939(c)(2) of the Act provides that the Secretary of Labor shall direct the vocational rehabilitation of a worker who is permanently disabled.²⁶⁴ Section 908(g), however, recognizes that the Secretary may require vocational rehabilitation of an employee who "is or may be expected to be totally or partially incapacitated for a remunerative occupation."²⁶⁵ The Secretary must arrange for vocational rehabilitation through appropriate public or private agencies, and, when such services are not otherwise available, pay for such services out of a special fund.²⁶⁶ A worker participating in an approved vocational rehabilitation plan may receive up to twenty-five dollars per week in maintenance payments out of the special fund.²⁶⁷

Participation by an injured worker in a rehabilitation program is purely voluntary.²⁶⁸ While a claimant has a duty to submit to medical or surgical treatment, neither the act nor accompanying regulations require that a claimant undergo rehabilitation or training.²⁶⁹

Under the FECWIA, the Secretary of Labor may direct a permanently disabled federal worker to undergo vocational rehabilitation.²⁷⁰ The Secretary then furnishes the vocational rehabilitation services. A worker pursuing an approved program is entitled to disability compensation at the rate set for total disability, reduced by any earnings received from remunerative employment other than employment undertaken pursuant to the rehabilitation program.²⁷¹ The Secretary may also award the worker an additional two hundred dollars per

263. 33 U.S.C. § 903 (1982).

264. *Id.* § 939(c)(2).

265. *Id.* § 908(g).

266. *Id.* § 939(c)(2).

267. *Id.* § 908(g).

268. *Berkman v. Todd Ship Yards*, 7 BENEFITS REV. BD. SERV. 933, 938 (1978).

269. *Simpson v. Seatrain Terminal of California*, 15 BENEFITS REV. BD. SERV. 187, 190 (1982).

270. 5 U.S.C. § 8104(a) (1982).

271. *Id.*

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F. Vocational Rehabilitation Programs for Veterans

The most comprehensive of the vocational rehabilitation programs designed to aid those injured in connection with their employment is the veterans' program.²⁷³ The broad statement of the program's goals underscores the comprehensive nature of the veterans' vocational rehabilitation program: "to provide for all services and assistance necessary to enable veterans with service-connected disabilities to achieve maximum independence in daily living and, to the maximum extent feasible, to become employable and to obtain and maintain suitable employment."²⁷⁴

An "employment handicap" for purposes of vocational rehabilitation under the veterans' program means "an impairment of a veteran's ability to prepare for, obtain, or retain employment consistent with such veteran's abilities, aptitudes, and interests."²⁷⁵ A "vocational goal" means to achieve "a gainful employment status consistent with a veteran's abilities, aptitudes, and interests."²⁷⁶ A veteran with a service-connected disability is entitled to a rehabilitation program upon a determination by the Veteran's Administration that he is in need of rehabilitation because of an employment handicap.²⁷⁷

Among the many services available through the veterans' program are the following: (1) "educational, vocational, psychological, employment, and personal adjustment counseling;" (2) a work-study allowance; (3) placement and post-placement services; (4) "personal adjustment and work adjustment training;" (5) vocational training, individualized tutorial assistance, tuition, fees, books, supplies, licensing fees, equipment, and other treatment, care, and services; (6) "prosthetic appliances, eyeglasses and other corrective and assistive devices;" (7) services needed by the veteran's family for the veteran's effective rehabilitation; (8) homebound training and/or self-employment for the most severely disabled; (9) travel and incidental expenses, plus a special transportation allowance to offset extra expenses during rehabilitation, job searching, and the initial employment stage; (10) special services including language training, voice and speech correction, training in ambulation and one-hand typing, orientation, reader and interpreter services, and telecommunications; (11) "services necessary to enable a veteran to achieve maximum inde-

272. *Id.* § 8111(b).

273. 38 U.S.C. §§ 1500-1521 (1982).

274. *Id.* § 1500.275. *Id.* § 1501(1).276. *Id.* § 1501(8).277. *Id.* § 1502.

pendence in daily living;" and (12) "other incidental goods and services determined by the Administrator to be necessary. . . ."278 The veteran is entitled to a subsistence allowance during rehabilitation and for two months after the conclusion of rehabilitation. This allowance can be reduced on an equitable basis when the veteran receives wages from an employer.²⁷⁹

The veteran participating in FECWIA rehabilitation may also obtain interest-free loans for up to twice the amount of his full-time institutional monthly subsistence allowance. These loans are repaid in installments by deductions from the veteran's future compensation payments, pensions, subsistence allowances, educational assistance allowances, and retirement pay.²⁸⁰

VI. CONCLUSION

Vocational rehabilitation of injured workers has become a primary goal of many workers' compensation programs. It is a humane, cost-effective, and sensible approach to the compensation of workers suffering from work-related injuries or illnesses. Payments for lost wages and medical care incorporated into workers' compensation awards are essential, but they are not designed to restore the worker completely to the position he occupied before his accident or disabling illness. The injured worker, employers, and insurance carriers all benefit from effective vocational rehabilitation programs. A worker who successfully participates in vocational rehabilitation will be able to return to gainful employment and will no longer need to rely on the security of a compensation check. Vocational rehabilitation programs also greatly benefit society at large. In economic terms, one more person is paying taxes, and contributing to national productivity. Perhaps more importantly, we create a more responsive, humane, and fair society by working with disabled workers and providing an employment environment where workers are assured that they will be able to return to productive, self-supportive lives if they are struck with a disabling accident or illness.

Much innovation and improvement is still needed in the vocational rehabilitation field, and its accomplishment will require the persistent, creative efforts of all involved. First, the costs of vocational

278. *Id.* § 1504(a).

279. *Id.* § 1508(a)(1)-(2), (c)(1).

280. *Id.* § 1512. Other provisions found in the veterans' program concern such matters as the period of eligibility, duration of benefits, initial and extended evaluations, entitlement to independent living services and assistance for the severely handicapped for whom vocational rehabilitation is not reasonably feasible, rehabilitation sources, the promotion of employment and training opportunities, employment assistance, and rehabilitation research. *Id.* §§ 1503, 1505-1506, 1509, 1515-1517, 1519.

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rehabilitation and physical restoration are most properly imposed upon the employer as one of the costs of doing business. The employer should provide not only the costs of retraining and job placement, but also incidental costs such as travel, uniforms, books and supplies, and room and board, if residence away from home is required. During the vocational rehabilitation process, a worker needs the assurance of a steady stream of income so he may participate in his program without the distraction of financial worries. He should therefore continue receiving compensation for lost wages during rehabilitation at a rate equivalent to temporary total or temporary partial disability. Additional maintenance payments may also be necessary in individual cases to assure the individual's completion of his rehabilitation.

Innovative programs that provide spouses of deceased workers with vocational training and provide employers with funds to modify the workplace so as to hire or re-hire handicapped workers should be encouraged and tested. Rehabilitation efforts should be initiated soon after the worker becomes disabled, before he settles into a pattern of dependency on workers' compensation benefits and income transfers. A legislature must, however, keep in mind that often a certain length of time must pass before an employee is psychologically prepared to embark on a vocational rehabilitation program.

Incentives for both workers and employers must be created to guarantee the success of vocational rehabilitation. After a hearing, a worker's compensation should be suspended or forfeited for his unjustified refusal to participate in vocational rehabilitation. Employers will be provided incentives because a worker who completes vocational rehabilitation will not require the same degree of supplemental compensation in the future as he had required prior to rehabilitation. In vocational rehabilitation lies the promise of restoring the worker to the labor force in a manner that is both humane and economical. If this goal is achieved, the worker will be able to return to his rightful position in the workplace, earning substantially the same wages and enjoying substantially the same opportunity for advancement in his occupation as he possessed prior to his unfortunate disability.

APPENDIX A: AN OVERVIEW OF WORKERS' COMPENSATION VOCATIONAL REHABILITATION

States	workers' voc. rehab. provisions	legislature's policy statement	prereq. to eligibility	comp. during voc. rehab.	voc. rehab. benefits	maintenance
Ala.	Ala. Code §§ 25-5-57(a)(4)b, d, i, j; 25-5-77(c)(d) (1975 & Supp. 1985)		ER elects; or EE requests and treating physician opines that EE cannot return to former employment and both physician and VR specialist write that VR is reasonably calculated to restore EE to gainful employment and is in best interest of EE.	TTD or TPD terminate upon max med recovery. <i>Floyd v. Hous. Auth.</i> , 397 So.2d 136 (Ala. Civ. App.), cert. denied, 397 So.2d 139 (Ala. 1981). PPD available thereafter. § 25-5-57(a)(3). PTD if injury totally incapacitates EE from working or being retrained for gainful employment. § 25-5-57(a)(4)d.	ER pays for evaluation; voc rehab.	
Alaska	Alaska Stat. §§ 23.30.041, 23.30.045 (1984)		EE entitled to full evaluation for VR within 90 days of injury if EE suffers a permanent disability that precludes return to suitable gainful employment	TTD or TPD § 23.30-041. See <i>Bignell v. Wise Mechanical Contractors</i> , 651 P.2d 1163 (Alaska 1982).	ER pays reasonable costs of evaluation and plan.	Board may award \$200/month in case of extreme hardship.

- ER = employer
- EE = employee
- TD = temporary disability
- PD = permanent disability
- TPD = temporary partial disability
- TTD = temporary total disability
- PPD = permanent partial disability
- PTD = permanent total disability

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TTD = temporary total disability
 TTD = temporary total disability
 PPD = permanent partial disability
 PTD = permanent total disability

States	workers' voc. rehab. provisions	legislature's policy statement	prereq. to eligibility	comp. during voc. rehab.	voc. rehab. benefits	maintenance
Ariz.	Ariz. Rev. Stat. Ann. § 23-1065(A)(1) (1983)			TTD and TPD terminate when physical condition becomes stationary. §§ 23-1044(F), 23-1047(A). See <i>Cleator v. Indus. Comm'n</i> , 129 Ariz. 179, 629 P.2d 1015 (Ariz. Ct. App. 1981).		Comm'n may provide additional awards from special fund to enable EE to accept Fed. or State VR.
Ark.	Ark. Stat. Ann. § 81-1310(O) (Supp. 1985)		EE entitled to receive PTD or PPD; EE must request VR prior to determination of permanent disability payments.	TTD and TPD terminate upon end of healing period. Claimant undergoing VR after med. recovery not entitled to permanent disability benefits, nor to special temporary benefits. <i>Ryan v. Napa</i> , 598 S.W.2d 443 (Ark. Ct. App. 1980); <i>Model Laundry & Dry Cleaning v. Simmons</i> , 596 S.W.2d 337 (Ark. Ct. App. 1980).	ER pays necessary costs of VR and reasonable expense of travel.	
Cal.	Cal. Labor Code: §§ 139.5, 4651.2, 5405.5, 5410, 5803 (West 1971 & Supp. 1986)		EE must request VR w/in 1 yr. from date of last finding of permanent disability or Appeals Bd. approval of compromise and release; except EE may institute proceedings w/in 5 yrs. after date of injury if there is a need for VR.	TTD, Cal. Labor Code § 139.5 (West Supp. 1986). EE entitled to permanent disability while adjusting to new job site. <i>Tangye v. Beck & Co.</i> , 43 Cal. Comp. Cases 3 (1978).	ER provides all reasonable and necessary voc. training.	ER pays additional living expenses necessitated by VR program.

States	workers' voc. rehab. provisions	legislature's policy statement	prereq. to eligibility	comp. during voc. rehab.	voc. rehab. benefits	maintenance
Colo.	Colo. Rev. Stat. § 8-49-101 (Supp. 1985)		EE unable to perform work for which he has previous training or experience and which pays as well as that for which EE is disabled. <i>Timberline Sawmill & Lumber v. Indus. Comm'n</i> , 624 P.2d 367 (Colo. Ct. App. 1981).	Weekly maintenance equivalent to TTD. Colo. Rev. Stat. § 8-49-101(1)(1) (Supp. 1985). PWD not available until after program. <i>Id.</i> § 8-49-101(5).	ER pays for VR, tuition, fees, transportation.	
Conn.	Conn. Gen. Stat. §§ 31-283a to 31-283c; 31-313(b) (Supp. 1985)		Compensable injury which disables EE from customary or most recent work.	Provisions for TTD and TPD deleted from statutes May 9, 1983 Pub. Act No. 83-65.	Workers' Rehab. Div. provides programs financed by special fund.	
Del.	Del. Code Ann. tit. 19, § 2322(a) (Supp. 1985)			Temporary benefits terminate once EE's medical condition becomes fixed. <i>Pusey v. Natkin & Co.</i> , 428 A.2d 1155, 1157 (Del. 1981).	ER provides reasonable VR services.	
D.C.	D.C. Code Ann. § 36-307 (1981)				ER provides VR services, including necessary travel expenses.	ER provides up to \$50/week.

State	workers' voc. rehab. provisions	legislature's policy statement	prereq. to eligibility	comp. during voc. rehab.	voc. rehab. benefits	maintenance
Fla.	Fla. Stat. Ann. §§ 440.15(2), 440.49 (West 1981 & Supp. 1985)		Compensable injury precluded EE from earning wages earned prior to injury. See <i>Walker v. New Restorium</i> , 409 So.2d 1201 (Fla. Dist. Ct. App. 1982).	TTD or TPD. Fla. Stat. §§ 440.15(2); 440.49(1). Date of max. med. improvement is artificially established by statute after VR program is completed. See <i>Cenville Communities, Inc. v. Brown</i> , 409 So.2d 1147 (Fla. Dist. Ct. App. 1982). EE who suffers certain serious injuries is entitled to TTD at increased rate of 80% of the average weekly wage for 6 months after date of injury if pursuing VR.	ER provides appropriate training and education for suitable gainful employment.	
Ga.	Ga. Code Ann. §§ 34-9-200, 34-9-200.1 (Supp. 1985)		Workers' Comp. Bd. deems VR required and likely to restore EE to suitable employment.	Max. med. recovery marks end of temporary disability benefits. <i>Nance v. Argonaut Ins. Co.</i> , 143 Ga. App. 537, 239 S.E.2d 156 (1977).	ER pays for rehab. benefits which in opinion of State Bd. of Workers' Comp. are reasonably necessary and likely to restore EE to suitable employment.	
Hawaii	Hawaii Rev. Stat. § 386-25 (Supp. 1984)		Dir. of Labor & Indus. Relations refers EEs who have or may have suffered permanent disability and who can be vocationally rehabilitated.	TTD. Hawaii Rev. Stat. § 386-25(c) (Supp. 1984).		

States	workers' voc. rehab. provisions	legislature's policy statement	prereq. to eligibility	comp. during voc. rehab.	voc. rehab. benefits	maintenance
Idaho	Idaho Code §§ 72-432(9), -433, -450, -501A (Supp. 1985)	Rehab. Div. established to assist in reducing period of temporary disability and to aid in restoring EE to gainful employment with least possible permanent physical impairment.	Indus. Comm'n may authorize or order retraining following a hearing or informal conference upon finding that a permanently disabled EE, after period of recovery, is receptive to and in need of VR to restore earning capacity.	ER pays TTD or TPD benefits. Idaho Code § 72-450 (Supp. 1985).		
Ill.	Ill. Rev. Stat. ch. 48, § 131.1 (Supp. 1985)			TTD or TPD during VR. <i>Hunter Corp. v. Indus. Comm'n</i> , 86 Ill. 2d 489, 427 N.E.2d 1247 (1981).	ER pays for treatment, instruction, and training necessary for VR.	ER pays all maintenance costs and expenses.
Ind.	none			TTD and TPD cease once injury has reached a permanent and quiescent state. Fact that EE cannot return to work does not compel a finding of temporary disability. <i>Roush v. W. R. Duncan & Son</i> , 96 Ind. App. 122, 130, 183 N.E. 410, 413 (1932); <i>Allen v. United Telephone Co.</i> , 168 Ind. App. 696, 701-02, 345 N.E. 2d 261, 265 (1976); <i>Callahan v. Lovelace Truck Service</i> , 169 Ind. App. 162, 164, 346 N.E.2d 623, 624 (1976).		

States	workers' voc. rehab. provisions	legislature's policy statement	prereq. to eligibility	comp during voc rehab	voc. rehab. benefits	maintenance
Iowa	Iowa Code Ann. §§ 85.34, .37, .70 (West 1984)		Injury resulted in permanent partial or permanent total disability and EE cannot return to gainful employment because of disability.	Where PPD suffered, ER pays compensation during healing period. Healing period ends when EE returns to work, significant improvement from injury not anticipated or EE capable of returning to substantially similar employment, whichever occurs first. Compensation for PPD begins at termination of healing period. PTD paid weekly during period of disability. Iowa Code Ann. §§ 85.34, .37 (West 1984)		ER pays \$ 20/week in addition to any other benefit payments.
Kan.	Kan. Stat. Ann. § 44-510g (1981)	Primary purpose of workers' comp. is to restore EE to substantial and gainful employment.	EE unable to perform work for which he has previous training, education, qualification, or experience; or unable to perform other substantial and gainful employment.	TTD. Kan. Stat. Ann. § 44-510g(g) (1981).	ER pays costs of evaluation. ER pays VR costs only if federal or state agency does not.	
Ky.	Ky. Rev. Stat. Ann. §§ 342.710, .715 (Baldwin Supp. 1985)	Primary purpose of workers' comp. is restoration of injured EE to to gainful employment.	Entitled to VR as may be reasonably necessary to restore him to suitable employment when he is unable to perform work for which he has previous training or experience.	80% of EE's average weekly wage not to exceed 100% of the state's average weekly wage times the percentage of his disability if eligible for PTD and actively participating in Bd. ordered VR. Ky. Rev. Stat. Ann. § 342.715 (Baldwin Supp. 1985).	ER pays for VR services.	

States	workers' voc. rehab. provisions	legislature's policy statement	prereq. to eligibility	comp. during voc. rehab.	voc. rehab. benefits	maintenance
La.	La. Rev. Stat. Ann. § 23-1226 (West 1985)		Entitled to VR when injury precludes EE from earning wages equal to wages earned prior to injury.	TTD or TPD. La. Rev. Stat. Ann. § 23-1226(F) (West 1985) Permanency cannot be adjudicated while EE is employed pursuant to rehab program <i>Id</i> § 23-1226 (G)	ER provides appropriate training and education.	
Me.	Me. Rev. Stat. Ann. tit. 39 §§ 81-90 (Supp. 1986)	Restoration of EE to gainful employment consistent with priorities of section 86.	Administrator must find EE suitable for VR following submission of evaluation of suitability. Me. Rev. Stat. Ann. tit. 39 §§ 85(2), 83(2) (Supp. 1986)	Rehab. plan may provide for comp. up to amount payable for total disability. Me. Rev. Stat. Ann. tit. 39 § 87(2)(E) (Supp. 1986).	Rehab. plan may provide that ER cover costs of reasonable and proper rehab. services; VR diagnosis and plan preparation; tuition, books and fees; other services and supplies necessary to carry out plan. Me. Rev. Stat. Ann. tit. 39 § 87(2)(A), (B), (C), (F) (Supp. 1986).	Rehab. plan may provide that ER pay a sum each week for sustenance and travel, not to exceed 25% of statewide weekly average. Me. Rev. Stat. Ann. tit. 39 § 87(2)(C) (Supp. 1986).
Md.	Md. Ann. Code art. 101, § 36(9) (1985)		Entitled to VR as may be reasonably necessary to restore him to suitable employment when he is disabled from performing work for which he was previously qualified	TTD. Md. Ann. Code art. 101, § 36(9)(c) (1985).	ER pays expenses of VR. Workers' Comp. Comm'n may allow transportation costs in unusual cases.	
Mass.	Mass. Gen. Laws Ann. ch. 152, §§ 30A-30D (West 1976)		Rehab. Comm'n must find EE fit and eligible for VR.		ER pays reasonable and necessary costs of VR services.	

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Rehab. Comm'n must
find EE fit and eligible
for VR.

Costs in unusual
cases.

ER pays
reasonable and
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VR services.

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States	workers' voc. rehab. provisions	legislature's policy statement	prereq. to eligibility	comp. during voc rehab.	voc. rehab. benefits	maintenance
Mich.	Mich. Comp. Laws Ann. § 418.319 (West 1985)		Entitled to VR services as may be reasonably necessary to restore him to useful employment, when unable to perform work for which he has previous training or experience.	Award of VR benefits does not affect EE's right to disability benefits. <i>Framolino v. Richmond Products</i> , 260 N.W.2d 908, 914 (1977)	ER pays for VR services and treatment.	ER pays for transportation and other necessary expenses arising out of VR.
Minn.	Minn. Stat. Ann. § 176.102 (West Supp. 1985)	Rehab. intended to restore EE, through PR and VR, so that EE may return to a job related to EE's former employment or to a job in another work area which produces an economic status as close as possible to that the EE would have enjoyed without the disability.	Comm'nr makes determination that EE eligible for rehab. services.	ER pays up to 156 weeks of compensation in amount equal to 125% of benefits otherwise payable to EE. Minn. Stat. Ann. § 176.102(5), (11) (West Supp 1985)	ER pays for evaluation of EE and preparation of plan; services and supplies needed to carrying out plan; reasonable cost of books, tuition, custodial daycare and travel; moving expenses; and costs of travel and daycare while job interviewing.	Comm'nr may award additional comp. if unusual or unique retraining circumstances, not to exceed 25% of comp otherwise payable.
Miss.	Miss. Code Ann. § 71-3-19, 71-3-103 (1972)		EE is or may be expected to be totally or partially incapacitated for remunerative occupation.	Compensation for TTD terminates upon max. med. recovery. Miss. Code Ann. § 71-3-7 (1972 & Supp. 1983). <i>Azwell v. Franklin Associates</i> , 374 So 2d 766 (Miss. 1979).		ER pays up to \$ 10/week.

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VOCATIONAL REHABILITATION

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States	workers' voc. rehab. provisions	legislature's policy statement	prereq. to eligibility	comp. during voc. rehab.	voc. rehab. benefits	maintenance
Mo.	Mo. Ann. Stat. § 287.144 (Vernon 1965 & Supp. 1986)			TTD or TPD payable during healing period. Mo. Ann. Stat. § 287.190(1) (Vernon 1965 & Supp. 1986). See <i>Baer v. City of Brookfield</i> , 366 S.W.2d 469, 471 (Mo. Ct. App. 1963); <i>Carenza v. Vulcan-Cincinnati, Inc.</i> , 368 S.W.2d 507, 514-15 (Mo. Ct. App. 1963)		
Mont.	Mont. Code Ann. § 39-71-1002 to -71-1005 (1985)		Dep't of Social and Rehab. Services certifies EE's entrance into course of VR. EE must be permanently disabled.	Medical stability marks end of temporary disability. See <i>Anderson v. Carlsons Transport</i> , 17J Mont. 290, 583 P.2d 440 (1978), Mont Code Ann. §§ 37-71-116(16), 39-71-1003 (1985)	State fund pays for tuition, books, and necessary equipment.	State fund provides living expenses up to \$ 50/week.
Neb.	Neb. Rev. Stat. §§ 48-121, -162.01, -162.02 (1984 & Supp. 1985)	One of primary purposes of Workers' Comp. Act is to restore EE to gainful employment.	EE entitled to reasonably necessary VR when he is unable to perform work for which he has previous training or experience in order to restore him to suitable employment.	TTD or TPD. Neb. Rev Stat. §§ 48-121(5), -162.01(4) (1984 & Supp. 1985)	VR fund pays for evaluation and report, training, treatment, and services.	
Nev.	Nev. Rev. Stat. §§ 616.083, .086, .222, .223, .277, .1725 (1985)	To aid in getting injured workmen back to work or to assist in lessening or removing any handicap	Consultation with injured worker and treating physician with respect to whether proposed VR is compatible with worker's age, sex, or physical condition.	TTD shall cease when any competent med. authority determines EE is capable of any gainful employment. Nev. Rev. Stat. § 616.585(3) (1985).	State Indus. Ins. System pays VR expenses.	

States	workers' voc. rehab. provisions	legislature's policy statement	prereq. to eligibility	comp. during voc. rehab.	voc. rehab. benefits	maintenance
N.H.	N.H. Rev. Stat. Ann. § 281:21-b (1978 & Supp. 1983)		EE unable to perform work for which he has previous training or experience. Entitled to VR as may be reasonably necessary to restore EE to suitable employment.	Med. stabilization marks end of healing period and temporary disability. <i>Dudier v. State Dep't of Labor</i> , 117 N.H. 315, 319, 373 A.2d 341, 343-44 (1977); see N.H. Rev. Stat. Ann. § 281:26 III (1978 & Supp. 1983)	ER pays such VR services as Labor Comm'n'er deems necessary; ER provides books, tools, and basic materials.	
N.J.	N.J. Stat. Ann. § 34:13-12(b) (West 1939 & Supp. 1983)			PTD compensation shall cease after 450 weeks unless EE submits to educational rehab. as ordered by rehab. comm'n'er.		
N.M.	N.M. Stat. Ann. § 52-1-50 (1978 & Supp. 1983)		EE entitled to VR when unable to return to former job.	Temporary disability ceases when EE's physical condition becomes static or stationary. <i>Lane v. Levi Strauss & Co.</i> , 92 N.M. 504, 506, 590 P.2d 652, 654 (Ct. App. 1979).	ER provides VR services, including retraining or job replacement as may be necessary to restore EE to suitable employment.	ER pays up to \$3000 as may be deemed necessary in discretion of court for board, lodging, travel, and other expenses and maintenance.
N.Y.	N.Y. Work. Comp. Law § 15(3)(v), (9) (McKinney 1965 & Supp. 1986)		EE expected to be totally or partially incapacitated for a remunerative occupation. Worker required to participate in Bd.-approved program as soon as practical.	Compensation for permanent disability available when med. condition is settled. <i>Clark v. General Electric Co.</i> , 68 A.D.2d 960, 414 N.Y.S.2d 766, 767 (1979); <i>Cecere v. Niagara County</i> , 71 A.D.2d 759, 760, 419 N.Y.S.2d 315, 317 (1979). Participation in VR does not change rate of compensation. <i>Thomas v. Kornblum</i> , 17 A.D.2d 889, 890, 233 N.Y.S.2d 634, 635-36 (1962).	VR fund provides additional compensation necessary for rehabilitation	VR fund pays up to \$ 30 per week toward maintenance

assist in lessening or removing any handicap.

prereq. VR is compatible with worker's age, sex, or physical condition.

Nev. Rev. Stat. § 616.583(1) (1983).

States	workers' voc. rehab. provisions	legislature's policy statement	prereq. to eligibility	comp. during voc. rehab.	voc. rehab. benefits	maintenance
N.C.	none			<p>Compensation for temporary disability available during healing period. N.C. Gen. Stat. §§ 97-31 (1985). See also <i>Perry v. Hibreten Furniture Co.</i>, 35 N.C. App. 518, 521, 241 S.E.2d 697, 700, <i>aff'd in part</i>, 249 S.E.2d 397 (N.C. 1978); <i>Crawley v. Southern Devices, Inc.</i>, 31 N.C. App. 284, 288, 299 S.E.2d 325, 328, <i>cert. denied</i>, 234 S.E.2d 2 (N.C. 1977).</p>		

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State	workers' voc. rehab. provisions	legislature's policy statement	prereq. to eligibility	comp. Juring voc. rehab.	voc. rehab. benefits	maintenance
N.D.	N.D. Cent. Code § 65-05.1-.01 to .07 (1985)	Employment related disability creates a burden upon the health and general welfare of citizens of the state and upon prosperity of the state and its citizens. Rehabilitation chapter aims to assist claimant and his family in adjustments to injury by providing comprehensive rehabilitation services, including medical, psychological, economic, and social rehab.	EE unable to obtain substantial employment. EE must notify Workmen's Comp. Bureau. Bureau then decides after testing whether EE is eligible for VR.	Bureau may award rehab. allowance in lieu of disability comp. to effect rehab. contract, not to exceed 125% of weekly comp. otherwise entitled to receive. N.D. Cent. Code § 65-05.1-06 (1985).	Bureau provides VR program, equipment, and tools pursuant to a rehab. contract wherein EE promises faithful performance of terms of contract.	Bureau pays rehab. allowance. Upon successful completion of contract, claimant entitled to as much as \$5000 to relocate or remodel business and living facilities as his condition requires.
Ohio	Ohio Rev. Code Ann. §§ 4121.61-.69 (Page 1980 & Supp. 1984)	To aid claimants in returning to work or to assist in lessening or removing any resulting handicap.	Rehab. Services Comm'n must certify that VR is feasible and that EE is capable of being vocationally rehabilitated.	Permanent character of disability is determined through an evaluation by the medical department of the Bureau of Workers' Comp. Ohio Rev. Code Ann. § 4123.56 (Page 1973)	Rehab Services Comm'n pays costs of VR.	Rehab Services Comm'n pays weekly amounts not to exceed amount claimant would receive for TTD, but not less than 50% of current state avg. weekly wage.

States	workers' voc. rehab. provisions	legislature's policy statement	prereq. to eligibility	comp. during voc. rehab.	voc. rehab. benefits	maintenance
Okla.	Okla. Stat. Ann. tit. 85 § 16 (West Supp. 1985)		Entitled to VR services to restore him to gainful employment when he is unable to perform same occupational duties as he was performing prior to injury.	Weekly comp benefits to which EE is otherwise entitled. Okla. Stat. Ann. tit. 85 § 16(D) (West Supp. 1985).	ER provides any services or training as Workers' Comp. Court deems necessary.	
Or.	Or. Rev. Stat. §§ 656.206, .258, .268, .283 (1985)	One purpose of chapter is to restore injured worker as soon as possible and to a condition of self-support and maintenance as an able-bodied worker.		TTD or TPD during VR, proportionately reduced by any sums earned during VR. Or. Rev. Stat. § 656.268(1), (2), (5) (1985). Carriers who are requested to make TTD payments to a medically stable EE in VR are reimbursed by the Workers' Comp Board. Or. Rev. Stat. § 656.728(3) (1985). See <i>Leedy v. Knux</i> , 581 P.2d 530 (1978).	Insurer or ER shall pay a vocational assistance provider for all voc. assistance service.	
Pa.	none			TTD or TPD available during healing period. See, e.g., 77 Pa. Cons. Stat. Ann. § 513 (25) (Purden Supp. 1985).		
R.I.	R.I. Gen. Laws §§ 28-33-41, -41.1, -38-1 to -38-25 (Supp. 1985)	To expedite the rehabilitation of and return to remunerative employment of all disabled EEs.	Every carrier and certified ER must submit a VR evaluation if EE has total or severe permanent disability and ER has paid comp. for 3 months and is still paying comp.	Compensation payments shall not be diminished or terminated while EE participated in approved VR. R.I. Gen. Laws § 28-33-41 (Supp. 1985).	ER bears expense of VR services.	

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States	workers' voc. rehab. provisions	legislature's policy statement	prereq. to eligibility	comp. during voc. rehab.	voc. rehab. benefits	maintenance
S.C.	S.C. Code Ann. § 42-13-90 (Law Cop. 1976)		EE suffers ionizing radiation injury or medical restrictions resulting from radiation and skills are not transferable to work not involving radiation exposure.	Temporary disability ends with maximum medical recovery. <i>Burns v. Joyner</i> , 264 S.C. 207, 213 S.E.2d 734 (1975); <i>Hines v. Hendricks Canning Co.</i> , 263 S.C. 399, 211 S.E.2d 220 (1975).	ER provides VR, retraining, and job placement.	
S.D.	S.D. Codified Laws Ann. § 62-4-5.1 (1978)		EE unable to return to his usual and customary line of employment and is totally disabled.	TTD comp available during VR. § 62-4-5.1 (1978).		
Tenn.	Tenn. Code Ann. § 50-6-233(b) (1985)			Comp for temporary disability available until EE attains maximum med. recovery from injury. <i>Brown Shoe Co. v. Pipes</i> , 581 S.W.2d 140 (Tenn. 1979).		
Tex.	Tex. Rev. Civ. Stat. Ann. art. § 306, § 7 (Supp. 1986)					
Utah	Utah Code Ann. §§ 35-1-67, -69 (Supp. 1985)			Temporary disability terminated upon fixed state of recovery, i.e., when physical condition finally heals. Comp. for permanent disability is not available until completion of VR or certification that EE cannot be rehabilitated. Utah Code Ann. §§ 35-1-65, -67 (Supp. 1985).	Indus. Comm'n pays State Bd. of Educ., Div. of VR up to \$1000 from second injury fund for VR and training.	

employment of
all disabled
EEs.

severe permanent
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paid comp. for 3
months and is still
paying comp.

N.I. (Gen. Laws § 28-33-41
(Supp. 1985).

States	workers' voc. rehab. provisions	legislature's policy statement	prereq. to eligibility	comp. during voc. rehab.	voc. rehab. benefits	maintenance
Vt.	Vt. Stat. Ann. tit. 21, § 641 (Supp. 1985)		EE unable to perform work for which he has prior training or experience. VR as reasonably necessary to restore him to suitable employment.	Temporary disability benefits end once recovery process ends or worker has achieved max possible restoration of his earning power. At that point, worker has reached end result of healing process. <i>Bishop v. Town of Barre</i> , 140 Vt. 564, 442 A 2d 50 (Vt 1982).	ER provided VR services, including retraining and job placement; reasonable cost of books, tools, basic materials.	
Va.	Va. Code § 65.1-88 (Supp. 1985)		ER furnishes VR at direction of Indus. Comm'n.	Comp. for temporary disability ceases upon maximum medical recovery. <i>County of Spotsylvania v. Har.</i> , 218 Va. 565, 238 S.E.2d 813 (Va. 1977).	ER furnishes reasonable and necessary VR services.	
Wash.	Wash. Rev. Code §§ 51.32.095, .110, .250 (Supp. 1986)	Primary purpose of workers' comp. title is restoration of injured worker to gainful employment.	VR necessary and likely to restore EE to gainful employment after evaluation and before permanent disability rating. Supervisor of Indus. Ins. makes determination.	TTD. Wash. Rev. Code § 51.32.095 (Supp. 1986).	ER or Indus. Ins. pays for VR, books, tuition, fees, supplies, equipment, transportation, and necessary expenses up to \$3000 in any 52 week period.	
W. Va.	W. Va. Code § 23-4-9 (1985)		Workmen's Comp. Comm'n. determines that EE has sustained or is likely to sustain permanent disability. EE susceptible to VR and can be returned to remunerative employment.	TTD available during VR. W. Va. Code § 23-4-9 (1985).	State Fund pays amount as may be necessary for VR up to \$10,000.	

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that EE has sustained or is likely to sustain permanent disability. EE susceptible to VR and can be returned to remunerative employment.

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insurance up to \$10,000.

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States	workers' voc. rehab. provisions	legislature's policy statement	prereq. to eligibility	comp. during voc. rehab.	voc. rehab. benefits	maintenance
Wis.	Wis. Stat. Ann. §§ 102.42(9), .43(3), .61 (West Supp. 1985)	One of primary purposes of workers' comp. chapter is restoration of injured EE to gainful employment.	EE must undertake VR within 60 days of date he has sufficiently recovered to do so, or as soon thereafter as officer or agency in charge of VR permits him to do so.	TTD or TPD available during VR. When EE is temporarily disabled on account of receiving VR and not otherwise from his injury, TTD limited to 40 weeks. But 40-week limitation does not apply if Dep't of Indus., Labor, and Human Relations determines that additional training is warranted. Wisc. Stat. Ann. § 102.43(5) (Supp. 1985).	ER pays actual and necessary expenses of travel.	
Wyo.	none			TTD ceases "[a]s soon as the recovery is so complete that the earning power of the employee at a gainful occupation for which he is reasonably suited by experience or training, is substantially restored..." Wyo. Stat. § 27-12-402(b) (1983). See <i>In re Hles</i> , 56 Wyo. 443, 110 P.2d 826 (1941).		
FECWIA	5 U.S.C. §§ 8104, 8111(b) (1982)		Sec. of Labor may direct permanently disabled individual to undergo VR.	TTD and augmented comp. for dependents available during rehabilitation, less any earnings during rehabilitation other than earnings from employment undertaken pursuant to VR. 5 U.S.C. § 8104(b) (1982).	Sec. provides VR services with funds from ER's Comp. Fund.	Sec. may pay up to \$200/month.

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States	workers' voc. rehab. provisions	legislature's policy statement	prereq. to eligibility	comp. during voc. rehab.	voc. rehab. benefit	maintenance
LHWCA	31 U.S.C. §§ 908, 939(c), 944 (1982)		EE is or may be expected to be totally or partially incapacitated.		Sec. of Labor pays for VR services and prostheses from § 944 Special Fund	Sec. pays \$25/week from § 944 Special Fund.

**APPENDIX B:
AN OVERVIEW OF WORKERS' COMPENSATION, VOCATIONAL REHABILITATION, CONTINUED**

States	benefits available when EE is required to reside away from customary residence	benefits available to/for family members	duration of benefits	referral provisions	EE penalties/responsibilities	miscellaneous
Ala.	Reasonable charges for necessary board, lodging, and travel.				Loss of comp. for each week of refusal; loss of right to receive a permanent and total disability rating.	ER may petition to revise award of permanent total disability comp. if EE no longer suffers permanent and total disability due to VR.
Alaska	Reasonable cost of board, lodging, and travel.		37 weeks. Rehab. Administrator may extend VR for another 37 weeks if special circumstances exist.		Forfeit comp. during period of refusal to participate in evaluation or plan. May recover 25% upon successful completion of VR.	Statute establishes order among VR plans and meaning of return to suitable gainful employment. Alaska Stat. § 23.30.041(3) (Supp. 1983).
Ariz.	See maintenance					

ER = employer
 EE = employee
 TD = temporary disability
 PD = permanent disability
 TPD = temporary partial disability
 TTD = temporary total disability
 PPD = permanent partial disability
 PTD = permanent total disability

States	benefits available when EE is required to reside away from customary residence	benefits available to/for family members	duration of benefits	referral provisions	EE penalties/responsibilities	miscellaneous
Ark.	Additional cost of room and board. <i>Gray v. Armour & Co.</i> , 598 S.W.2d 434, 435 (Ark. Ct. App. 1980). ER pays reasonable expense of travel.	None. See <i>Gray v. Armour & Co.</i> , 598 S.W.2d 434 (Ark. Ct. App. 1980).	60 weeks		Workers' Comp. Comm'n may consider whether VR would diminish permanent disability. <i>Smelser v. S.H. & H. Drilling Corp.</i> , 593 S.W.2d 61, 62 (Ark. Ct. App. 1980).	EE, if not working or receiving other weekly benefits, is entitled to payment at his regular weekly benefit rate for a period of 6 weeks commencing on date of request for VR while parties explore VR potential.
Cal.	See maintenance					ER may not petition to decrease or terminate temporary disability benefits during VR. See generally <i>Shasta Convalescent Hospital v. Workers' Compensation Appeals Bd.</i> , 132 Cal. App. 3d 997, 183 Cal. Rptr. 602 (Cal. App. 1982).
Colo. --	ER pays transportation		26 weeks. Dir. of Indus. Comm'n may extend VR services for additional 26 weeks.	If ER or ins. carrier does not provide VR, Dir. may refer EE to qualified physician or facility for VR evaluation. If VR reasonably necessary, ER must pay costs.	If EE withdraws from VR program, PPD is calculated as though he successfully completed VR.	Div. of Labor to cooperate with Dep't of Soc. Services regarding VR.

Colo.

ER pays transportation

26 weeks. Dir. of Indus. Comm'n may extend VR services for additional 26 weeks.

If ER or ins. carrier does not provide VR, Dir. may refer EE to qualified physician or facility for VR evaluation. If VR reasonably necessary, ER must pay costs.

If EE withdraws from VR program, PPD is calculated as though he successfully completed VR.

(Cal. App. 1982)

Div. of Labor to cooperate with Dep't of Soc. Services regarding VR.

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States	benefits available when EE is required to reside away from customary residence	benefits available to/for family members	duration of benefits	referral provisions	EE penalties/responsibilities	miscellaneous
Conn.						Conn. Gen. Stat. § 31-283a (Supp. 1985) establishes a div. of workers' rehab. within workers' comp. comm'n.
Del.	ER pays reasonable cost of board, lodging, and travel. See <i>Mosely v. Delaware</i> , 372 A.2d 178 (Del. 1977).				Loss of comp. for each week of refusal to accept lkl ordered VR. <i>Wilmington Hous. Auth. v. Gonzales</i> , - 333 A.2d 172 (Del. Super. Ct. 1975).	
D.C.					Suspension of comp. during period of refusal.	Mayor monitors VR.
Fla.	Reasonable cost of board, lodging, and travel.		26 weeks. Dep. Comm'n'er, upon finding it necessary and proper, may extend for additional 26 weeks.		Refusal to accept rehab. results in 50% reduction in weekly comp.	Dep. Comm'n'er must determine whether there is a reasonable probability that EE can be rehabilitated before adjudication of permanent and total disability.
Ga.	ER pays reasonable costs of board, lodging, and travel.		26 weeks. Workers' Comp Bd. may extend for additional period if required and likely to restore EE to suitable employment.		Bd. in its discretion may suspend, reduce, or limit comp.	

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States	benefits available when EE is required to reside away from customary residence	benefits available to//or family members	duration of benefits	referral provisions	EE penalties/responsibilities	miscellaneous
Hawaii				Dir. of Labor & Indus. Rel. makes referrals to Dep't of Soc. services and Housing and private VR providers.		Dir. adopts rules regarding additional living expenses and VR costs.
Idaho	ER pays reasonable travel expenses to and from facility. If EE outpatient, ER pays daily subsistence as ordered by the Comm'n to cover reasonable expenses of board, lodging and transportation.		52 weeks. Indus. Comm'n may extend for additional 52 weeks if it finds extension advisable after application and hearing.			Rehab. Div. established within Indus. Comm'n.
Ill.	Sec maintenance					
Ind.						
Iowa			13 weeks. Indus. Comm'n may extend for additional 13 weeks if circumstances indicate continuation will accomplish VR.			
Kan.	If ER furnishes VR, reasonable costs of board, lodging and travel not to exceed \$2000 for any 26-week period. Dir. may require ER to pay additional \$1000. Such costs may be borne by Federal, State or other public agency.		26 weeks if VR at ER's expense. After hearing, in extremely unusual case, Dir. may extend for additional 26 weeks.	Dir. of Div. of Worker's Comp. may refer EE to federal, state, or public agency which may provide services at no cost to ERs.	Suspension of compensation. If refusal exists beyond 90 days, Dir. must cancel comp.	Statute provides for rehab. administrator.

travel not to exceed \$2000 for any 26-week period. Dir. may require ER to pay additional \$1000. Such costs may be borne by Federal, State or other public agency.

in extraordinary unusual case, Dir. may extend for additional 26 weeks.

Federal, state, or public agency which may provide services at no cost to ERs.

refusal exists beyond 90 days, Dir. must cancel comp.

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States	benefits available when EE is required to reside away from customary residence	benefits available to/for family members	duration of benefits	referral provisions	EE penalties/responsibilities	miscellaneous
Ky.	ER pays reasonable cost of board, lodging, and travel.		52 weeks. Bd. may extend period after hearing in unusual cases.	Workers' Comp Bd. may refer EE to physician of facility for evaluation of suitability of VR, and based on response, order that VR be provided.	50% loss of comp. for each week of refusal.	Statute creates rehab. panel.
La.	ER pays reasonable cost of board, lodging, and travel.		26 weeks. Dir. or court may extend 26 weeks if necessary and proper.	Upon application of ER, EE or Insurer, Dir. may refer EE to physician or facility for purpose of evaluating EE's need of VR and the scope of VR necessary to restore EE to suitable gainful employment. Based on evaluation, Dir. may order VR.	Weekly comp. reduced by 50% during period of refusal.	<i>See Hughes v. Webster Parish Police Jury</i> , 414 So.2d 1353 (La. Ct. App. 1982).

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States	benefits available when EE is required to reside away from customary residence	benefits available to/for family members	duration of benefits	referral provisions	EE penalties/responsibilities	miscellaneous
Me.	See maintenance		Determined during plan development and included in plan. Me. Rev. Stat. Ann. tit. 39 § 87(2)(F) (Supp. 1985).	Upon mandatory filing of report by ER, administrator may order evaluation of suitability of VR. Employee has final decision on which approved provider conducts evaluation. Me. Rev. Stat. Ann. tit. 39 § 83(1), (2) (Supp. 1985).	Suspension of benefits for no longer than period of refusal. Me. Rev. Stat. Ann. tit. 39 § 87(4) (Supp. 1985)	Rehabilitation plan, which may provide for a variety of services and costs, developed following a positive evaluation of suitability of VR. Plan must be approved by administrator. In-house VR allowed. Me. Rev. Stat. Ann. tit. 39 § 83(3), 83(4), 84. Employer reimbursed from Employment Rehab. Fund for actual direct costs of VR, provided certain conditions met. Me. Rev. Stat. Ann. tit. 39 §§ 84(3), 87(6) (Supp. 1985).
Md.	ER pays up to \$40 per week.		24 months	Workmen's Comp. Comm'n refers EE to appropriate VR evaluation agency.	Forfeits all TTD during period of refusal.	See Cray, <i>The Developing Law on Equal Employment Opportunity for the Handicapped: An Overview and Analysis of the Major Issues</i> , 7 U. Balt. L. Rev. 183 (1978).

States	benefits available when EE is required to reside away from customary residence	benefits available to/for family members	duration of benefits	referral provisions	EE penalties/responsibilities	miscellaneous
Mass.	ER pays necessary expenses for travel, room and board.			Div. of Indus. Accidents and Rehab. Bd. refer EE to an impartial Rehab. examiner. ER required to provide Rehab. Bd. name of any EE receiving comp. for 6 months		EE not required to accept VR.
Mich.	See maintenance		52 weeks. Dir., after review, by special order may extend additional 52 weeks, or portion thereof.	Dir. of Bureau of Workers' refers EE to bureau-approved facility for evaluation.	Dir. determines loss or reduction of comp for each week of the period of refusal except comp. for partial disability.	
Minn.	ER pays reasonable costs of board and lodging.	Rehab. Serv. Sec. of Workers' Comp. Div. may provide VR to a dependent spouse who is in need of VR to become self-supporting	156 weeks	Generally, ER to provide rehab. consultation w/in 3 days after EE has 60 days of lost work. If not, comm'r will do so.	Comp. may be suspended, terminated or altered if EE uncooperative.	Statute creates Rehab. Review panel to hear appeals, study rehab., recommend rehab. rules.
Miss.			52 weeks			

N.J.

housing, and travel.

Commission may extend period as may be reasonable and necessary to accomplish successful results.

refusal.

within Winkler's Camp Div.

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States	benefits available when EE is required to reside away from customary residence	benefits available to/for family members	duration of benefits	referral provisions	EE penalties/responsibilities	miscellaneous
N.M.	see maintenance	see maintenance		Court refers all cases in need of VR to appropriate public or private agencies in NM or in any other state.	Refusal does not result in forfeiture or diminution of any award.	<i>Lane v. Strauss & Co.</i> , 92 N.M. 504, 507, 590 P.2d 652, 654 (Cl. App. 1979), distinguishes rehab. from VR as the restoration of an individual to his greatest potential—physically, mentally, socially, and vocationally.
N.Y.					Refusal does not affect right to disability benefits. <i>Kulevas v. J. Li. Williams & Co.</i> , 27 A.D.2d 22, 24, 275 N.Y.S.2d 546, 548-49 (1966).	VR constitutes care and treatment. Dep't of Labor cooperates with Dep't of Education in providing VR.
N.C.						

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VOCATIONAL REHABILITATION

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States	benefits available when EE is required to reside away from customary residence	benefits available to/for family members	duration of benefits	referral provisions	EE penalties/responsibilities	miscellaneous
N.D.			Rehab. contract establishes duration of program.		Discontinuance of lost-time benefits during period of refusal. If noncompliance continues for 6 months after final order discontinuing benefits, Bureau loses all jurisdiction to award further disability comp. benefits.	Bureau pays claimant's attorney's fees for purposes of effecting rehab. contract. Dir. of Rehab. Services responsible for program.
Ohio			Living maintenance payments not to exceed 6 months unless comm. decides claimant will benefit by an extension.	Indus. Comm'n refers to Rehab Serv. Comm'n all claimants with respect to whom it believes inquiry into VR should be made.		
Okla.	ER pays reasonable cost of board, lodging, travel, tuition, books, necessary equipment.		52 weeks. Court may extend for additional 52 weeks after affording interested parties an opportunity to be heard.	Judge of Workers' Comp. Court refers EE to qualified physician or facility.	Refusal to accept VR does not diminish benefits.	Court to cooperate with VR Sec. of Dep't of Human Services and Employment Service of Okla. Employment Security Comm'n.
Or.						
Pa.						

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States	benefits available when EE is required to reside away from customary residence	benefits available to/for family members	duration of benefits	referral provisions	EE penalties/responsibilities	miscellaneous
R.I.	Reasonable expenses for board, lodging, and travel.				Comp. suspended while injured EE willfully refuses to participate in approved VR program.	ERs or carriers must contribute to Donicy Rehab. Center for rehabilitation of injured workers.
S.C.	Reasonable cost of board, lodging, and travel.			52 weeks. Indus. Comm'n may extend for 26 weeks by special order after opportunity to be heard.	Loss of comp for each week during period of refusal.	
S.D.						
Tenn.				Div. of Workers' Comp. to refer all feasible cases for VR to Dep't of Education.		
Tex.				Indus. Accident Bd. refers EE to Rehab. Comm'n when VR is indicated.		If artificial appliances would improve EE's occupational opportunities, they must be furnished. Tex. Rev. Civ. Stat. Ann. art. 8306, § 7d (Vernon 1986).
Utah			ER's maximum liability is 6 years, after which second injury fund is used.	If EE tentatively has a PTD, Indus. Comm'n must refer him to Div. of VR.	Refusal results in loss of PTD comp. from Second Injury Fund once ER's liability for PTD ends (after 312 weeks).	

States	benefits available when EE is required to reside away from customary residence	benefits available to/for family members	duration of benefits	referral provisions	EE penalties/responsibilities	miscellaneous
Vt.	Reasonable cost of board, lodging, and travel.			Comm'n'r of Labor and Indus. may refer EE to qualified physician or facility for evaluation.	Loss of comp. for each week of refusal if Comm'n'r so directs.	
Va.					EE barred from further comp. until refusal ceases. No comp. shall be paid for period of suspension unless Indus. Comm'n finds refusal justified.	
Wash.	ER pays reasonable cost of board and lodging.	ER pays for child or dependent care.	52 weeks (\$3000 plus TTD); Supervisor may after review extend VR another 52 weeks.		Dep't of Labor may reduce, suspend, or deny comp. for refusal to participate after notice given.	Second Injury Fund pays ER up to \$5000 per worker per job modification to encourage ERs to hire workers with disability from work-related injury.

States	benefits available when EE is required to reside away from customary residence	benefits available to/for family members	duration of benefits	referral provisions	EE penalties/responsibilities	miscellaneous
W. Va.						Permanently disabled EE must prove by a preponderance of evidence that he can be vocationally rehabilitated and returned to remunerative employment. <i>Estes v. Workmen's Compensation Comm'ee</i> , 150 W. Va. 492, 147 S.E.2d 400 (W. Va. 1966).
Wis.	ER pays actual and necessary costs of maintenance.			40 weeks. Limitation does not apply if Dep't finds additional VR is warranted.		
Wyo. FECWIA					Sec. may reduce prospectively the EE's monetary compensation in accordance with what probably would have been his wage-earning capacity in the absence of his failure to cooperate.	

States	benefits available when EE is required to reside away from customary residence	benefits available to/for family members	duration of benefits	referral provisions	EE penalties/responsibilities	miscellaneous
LHWCA				Sec. provides EEs receiving comp. or VR services and assists EEs in obtaining best services possible.		

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