

# Indemnity Benefits

In 2003, SB 757 created a new structure for permanent partial disability (PPD) awards. The changes apply to claims for injuries occurring since Jan. 1, 2005:

- Injuries to all body parts are rated in relation to the whole person. There is no longer a distinction between scheduled and unscheduled awards, and awards are no longer measured in degrees.
- Workers with permanent disability receive an impairment benefit based on the state average weekly wage multiplied by the percentage of impairment. Benefits are adjusted annually in accordance with the change in the state average weekly wage.
- Workers unable to return to work receive a work disability benefit based on the impairment modified by age, education, adaptability factors, and earnings at the time of injury. Wage-based work disability rates are limited to a range between 50 percent and 133 percent of the state average weekly wage.

In 2005, HB 2408 modified this new structure. Workers injured since Jan. 1, 2006, who are released to regular work are specifically excluded from work disability benefits. HB 2408 also mandated a study by the department of the impact of the PPD benefit changes.

Also in 2005, SB 386 provided increased access to permanent total disability benefits and protections for severely injured workers.

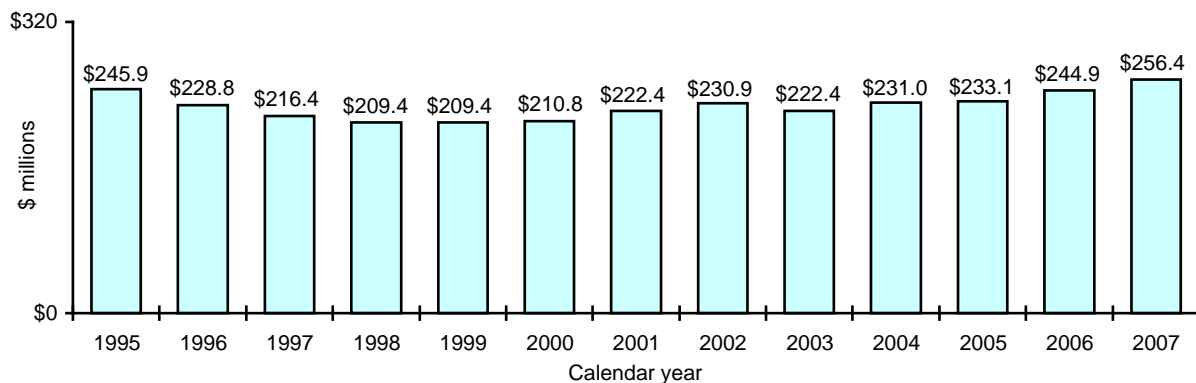
In 2007, HB 2244 removed the sunset in the 2003 bill and made the permanent partial disability changes permanent. The bill also required the Workers' Compensation Management-Labor Advisory Committee (MLAC) to review permanent partial disability benefit amounts on a biennial basis and make recommendations to ensure the original policy goals continue to be met over time.

## Indemnity benefits

Indemnity benefits for workers with accepted disabling claims include temporary total and partial disability (time-loss) payments during recovery from the injury, permanent partial and permanent total disability awards for permanent impairment and wage loss, fatality benefits, disputed claim settlements and claim disposition agreements, and professional services and purchases under vocational assistance. (Benefits for the two other return-to-work programs, the Employer-at-Injury Program and the Preferred Worker Program, are paid from the Workers' Benefit Fund rather than by insurers; they are not included here.)

In 2001, SB 485 included several changes to temporary disability benefits. The bill raised the ceiling on benefits for temporary total disability (TTD) to

Figure 13. Indemnity benefits paid for accepted disabling claims, 1995-2007



133 percent of the statewide average weekly wage. Also, for the first time, workers could be paid for wages lost from multiple jobs. A worker is responsible for providing proof of the multiple jobs to the insurer. The disabling status of the claims is determined by the status for the job at injury. Therefore, if a worker can return immediately to the job at injury but not to a second job, the claim is nondisabling, and no time-loss benefits are paid for the job at injury.

SB 485 did two things to protect employers and insurers from the cost of these added benefits. For employers, the supplementary benefits paid cannot be used for ratemaking, for an employer's rating, or for dividend calculations. Insurers may pay the supplemental benefits; if they do, the department reimburses the insurer for the benefits and its administrative costs from the Workers' Benefit Fund. If the insurer chooses not to pay the benefits, the department pays benefits directly to the worker, also from the Workers' Benefit Fund.

Indemnity benefits paid on accepted disabling claims increased moderately during the current decade; in 2007, an estimated \$256.4 million was paid. Of this amount, 42 percent were temporary disability payments, 28 percent were permanent partial disability awards, and 21 percent were settlements (disputed claim settlements and claim disposition agreements). Almost all accepted disabling claims have time-loss benefits; about 30 percent have PPD benefits granted. Settlements on accepted disabling claims occur more often as claim disposition agreements (CDAs), which release rights to all indemnity benefits, rather than disputed claim settlements on denied medical conditions; CDAs accounted for 81 percent of settlement dollars paid in 2007.

The average indemnity benefit for 2007 was \$10,565. Average indemnity benefits have increased by an average of 4 percent per year since 1998. Over the same period, the average weekly wage used to set most benefit levels increased by an average of 2.8 percent per year.

Average time-loss dollars increased slightly in 2007, to \$4,519, continuing a trend of annual increases from the low of \$2,931 in 1997. The average days of time loss paid, a measure of claim duration,

declined from a high of 92 days in 1990 to 53 days in 2000, after which the trend turned upward, to 67 days for claims last closed or settled in 2007. For claims with permanent partial disability awards, the average PPD award had been increasing at a rate of 4.5 percent per year; the average award for claims last closed in 2007 was \$10,579.

In the 1980s, permanent total disability (PTD) claims accounted for a significant portion of indemnity dollars. By 1993, however, the number of net PTD claims had declined to 13 from the peak of 195 in 1988. Permanent total disability benefits were affected by law amendments that standardized permanent disability rating and redefined gainful employment. The creation of CDAs in 1990 and changes in claims management practices also reduced the number of net PTD awards. The number for 2007 was 14, not much different from the net PTD award counts in preceding years. Senate Bill 386 (2005), which modified criteria for eligibility and rescission of PTD benefits, went into effect in 2006; the early effects of this change can be seen in the reduction in rescissions: one each in 2006 and 2007.

### National rankings and comparisons

Along with the costs of indemnity benefits, national rankings that address adequacy of benefits have been important to Oregon's policymakers. States can be ranked using seven categories of maximum indemnity (statutory) benefits. Oregon's ranking for temporary total disability benefits has been above the 86th percentile since 2002, in large part a result of 2001 legislation that raised the ceiling on TTD. After the implementation of SB 485, about 10 percent of workers with a disabling claim received increased time-loss payments, while only about 2 percent have TTD benefits reduced by the higher maximum.

In 2006, Oregon's maximum benefits continued to be above the national median for PTD awards, survivor's benefits for spouses with children, and burial allowances. For the first time, permanent partial disability benefits for both scheduled and unscheduled body parts or systems were also above the national medians. This is attributable to SB 757 in 2003, which went into effect in 2005. The only benefit below the median was survivor's benefits for spouses without children.

Although the national median for maximum benefits has been useful in comparing PPD and other benefits among states, it is insufficient to measure the generosity of benefits. The most recent study to address this issue came in 2001, when the RAND Institute for Civil Justice conducted a multi-state evaluation of the adequacy and equity of cash benefits, especially PPD, for New Mexico. Oregon was included in a group of four comparison states, using Oregon claims and benefit data from 1992 and 1993 injuries. The study researchers derived estimates of post-injury wage losses and the proportions of lost wages that were replaced by indemnity benefits.

None of the states studied met the researchers' standards for adequate (two-thirds) replacement of wage losses by PPD benefits. No state's indemnity benefits replaced as much as half of the estimated 10-year earnings losses. Oregon's overall rate of pre-tax wage replacement was 42 percent, second to New Mexico's rate. The study did note that workers' post-injury earnings losses were lower in Oregon than in most of the four other states. The researchers concluded that this was largely a product of Oregon's emphasis on return-to-work incentives. These programs reduce the length of occupational disability.

### **House Bill 2408 study of PPD benefit structure**

A section of HB 2408 in 2005 mandated that the department report to the 2007 Legislature on the impact to permanent partial disability awards from the SB 757 and HB 2408 changes to the benefit structure. The department's study was based on a random sample of PPD awards made in the last nine months of calendar year 2005, and compared three sets of laws and associated administrative rules:

- PPD benefits and rules for dates of injury immediately prior to Jan. 1, 2005
- PPD benefits and rules for dates of injury in 2005 (effects of SB 757)
- PPD benefits and rules for dates of injury in 2006 (effects of HB 2408)

This method was chosen because claims with dates of injury under the more recent laws were not sufficiently mature to provide an accurate reflection of the law within the study's time frame. Thus, the study results reflect the potential effects of SB 757 and HB 2408 on the PPD benefit structure. While the sample study results did show increased average PPD awards under SB 757 and small decreases under HB 2408, the differences were not statistically significant.

The study data showed that 26 percent of SB 757 cases and 24 percent of HB 2408 cases received work disability awards. The study confirmed one of the expected effects of SB 757, which was to reallocate PPD award dollars to claims with greater economic loss. The assumption was that claimants who returned to regular work (generally shorter-duration claims) would receive lower awards under SB 757. Experience for short-duration claims rated under SB 757 supported the assumed effect. Average awards for 2005 claims that were closed within three quarters of the date of injury were more than 25 percent lower than comparable claims in 2004.

### **SB 835 Study of Fatality Benefits**

In SB 835, the 2007 Legislature required a study and report by the Workers' Compensation Management-Labor Advisory Committee (MLAC) on adequacy of death benefits in the workers' compensation system. The bill required the study include review of:

- The current method of calculating burial benefits in relation to the actual cost of burial
- Current formulas for determining benefits
- The categories of beneficiaries who are entitled to benefits
- The feasibility of providing lump-sum benefit payments

MLAC appointed a subcommittee to conduct the study, which met seven times in 2007 and 2008, and included opportunity for public testimony. The subcommittee found that the current fatality benefit structure is generally working well, with a few areas for improvement.

The subcommittee approved a set of recommendations based on its study, which included some administrative process enhancements. The Governor and MLAC requested a draft bill to include the major statutory recommendations contained in the report:

- Broadening the statutory term “burial” to the more encompassing term “final disposition of body and funeral services.” This ensures that the benefit covers the wide range of options available to the worker’s family.
- Doubling the amount of the burial benefit, from 10 times to 20 times the state average weekly wage.
- Allow the family, employer, or other parties to submit burial and funeral bills to the insurer for 60 days after the claim is accepted. At that point, the insurer would pay the unused amount of the benefit to the worker’s estate to address any remaining expenses. MLAC bases this recommendation on public input about the number of issues that a family must take care of right after the worker’s death, as well as other expenses that arise long after the burial and funeral.
- Create a category of benefits for children aged 18-23, who are attending school, but have no surviving parents. Set the benefit amount at  $4.35 \times 66 \frac{2}{3}$  percent of the state average weekly wage.
- Clarify ORS 656.218 so that when a worker without statutory dependents dies before his or her permanent partial disability award is paid in full, the insurer must pay the full amount of the remaining award to the worker’s estate.