Return-to-Work Assistance

The fundamental goals of the workers' compensation system include returning injured workers to their jobs quickly and enabling them to earn close to their pre-injury wages. Oregon statute does this in three ways. First, the disability benefits structure has incentives to get injured workers back to work. Second, statute prohibits employment discrimination and provides re-employment and reinstatement rights to injured workers. The Bureau of Labor and Industries enforces those laws, as well as other civil rights. Third, the workers' compensation system assists injured workers with three employment programs.

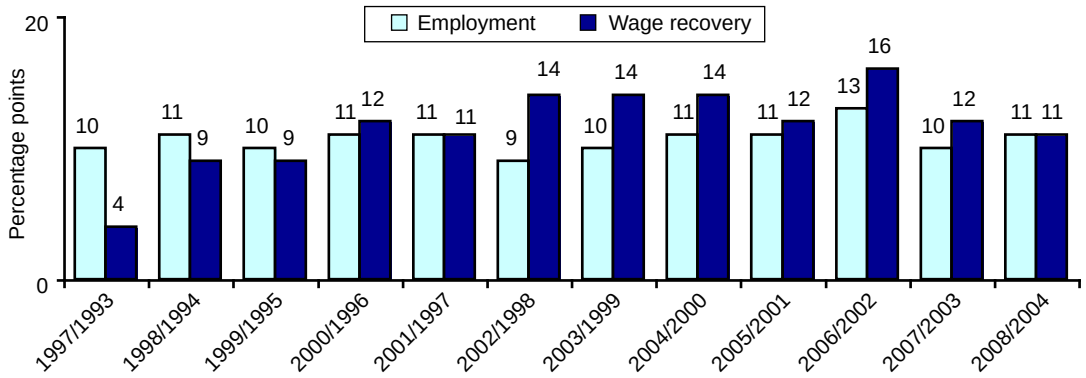
The Management-Labor Advisory Committee has been studying the three return-to-work programs since the end of the 2003 legislative session. Recommendations to improve access to the programs, increase participation, and streamline processes have been enacted into law through Senate Bill 119, effective Jan. 1, 2006, and by July 1, 2005, and Dec. 1, 2007, amendments to Oregon Administrative Rules: 436-105, Employer-at-Injury Program; 436-110, Preferred Worker Program; and 436-120, Vocational Assistance.

Oregon's return-to-work programs

The Employer-at-Injury and the Preferred Worker programs provide incentives to employers who choose to hire injured workers. The Employer-at-Injury Program focuses on early return to transitional work while workers have medical release to restricted work and the claim is still open. The Preferred Worker Program targets workers who have known permanent work restrictions. The essence of both programs is to help workers return to work as quickly as possible in jobs that accommodate their restrictions. Costs are paid from the Reemployment Assistance Program within the Workers' Benefit Fund (WBF). The WBF is funded by assessments paid equally by workers and their employers. The vocational assistance program is available for only the most severe disabilities; insurers provide formal plans for returning disabled workers to suitable jobs. For injuries after 1985, the program is funded through employers' insurance premiums.

The department measures the effectiveness of return-to-work programs, in part, by examining employment and wage data reported to the Oregon Employment Department. The wages are reported in the 13th quarter after the disabling injury or exposure — a point at which most workers have recuperated and used return-to-work programs.

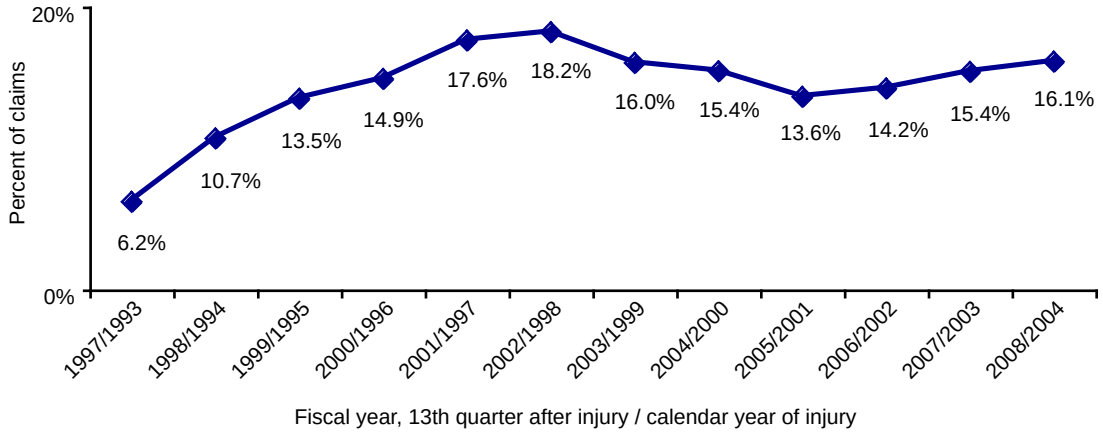
Figure 14. Employment and wage advantage for return-to-work program users, FY 1997-2008



Fiscal year, 13th quarter after injury / calendar year of injury

Note: The data are the percentage point differences in employment and wage-recovery rates between workers who used return-to-work programs and similar workers who did not. The measures are based on a snapshot of wages reported in the 13th quarter after the disabling injury or exposure. This is a point at which most workers have recuperated and used return-to-work programs.

Figure 15. Percent of closed disabling claims with use of return-to-work programs by fourth year post-injury, FY 1997-2008



The department compares employment and wage-recovery rates between workers who used return-to-work programs and similar workers who did not. In fiscal year 2008, the employment rate of workers injured in 2004 was 11 percentage points higher for workers using return-to-work programs compared to similar workers who did not use these programs. Wage recovery for workers who used these programs was 11 percentage points higher.

The department also monitors use of the programs for disabling claims that close within 13 quarters of injury. The use rate rose rapidly after the introduction of the Employer-at-Injury Program in 1993. For disabling injuries that occurred in 1993, the use rate was measured in 1997; it was more than 6 percent. Peak use came in 2002, when slightly more than 18 percent of workers with closed disabling claims from 1998 injuries used return-to-work programs. Program use has trended upward beginning in 2006. One inference is that statutory and administrative law changes have succeeded to some extent in improving access and participation. However, economic conditions probably have an effect on all these indicators, whether of use or effectiveness.

Profiles of each return-to-work program follow.

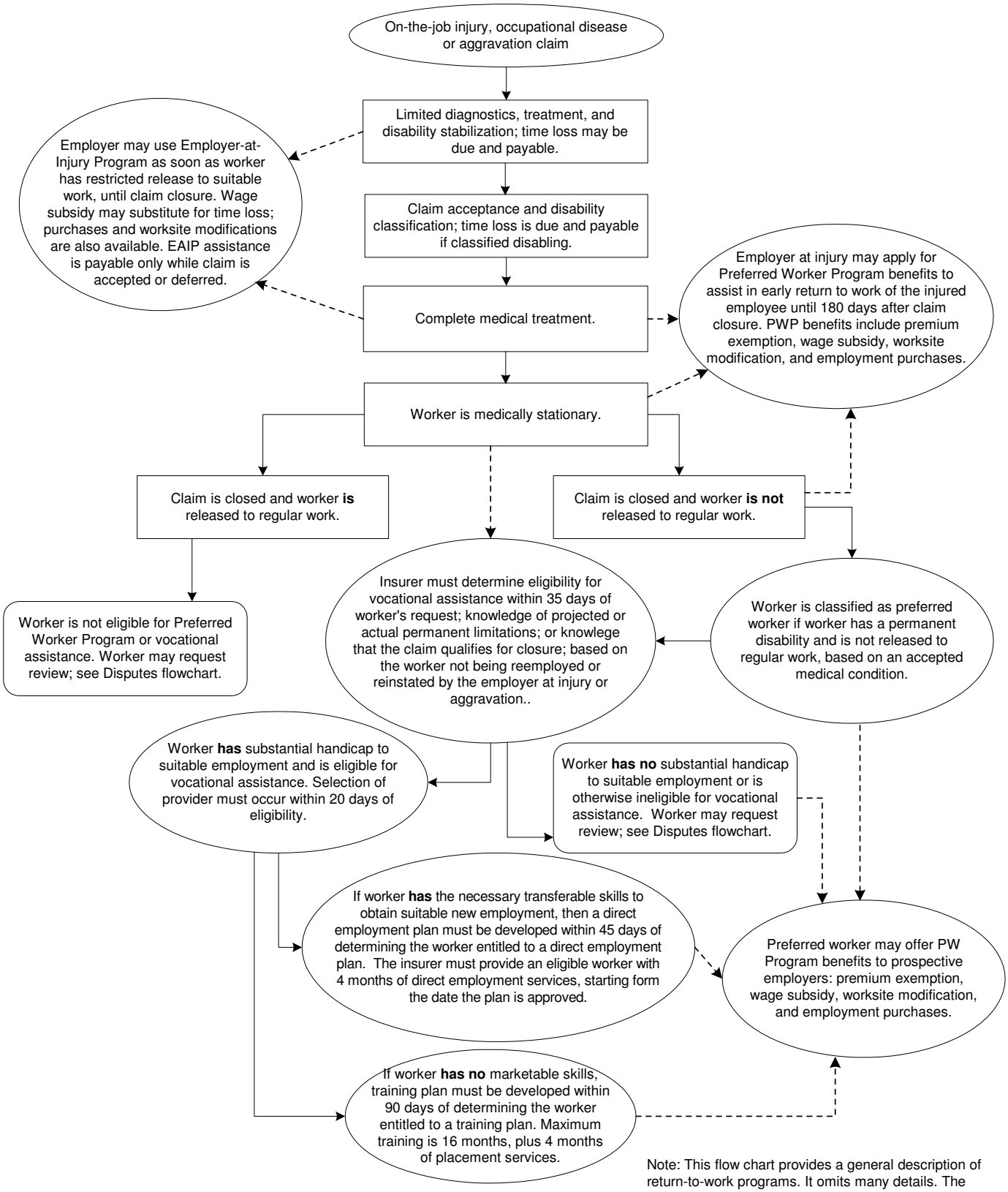
The Employer-at-Injury Program

The Employer-at-Injury Program (EAIP), created in 1993, is available to Oregon employers who obtain temporary medical releases specifying their injured workers may return to light-duty, transitional jobs. Insurers arrange job placements for which they receive a flat fee of $120 each. Assistance to employers generally consists of a 50 percent wage subsidy for a period of up to three months. Worksite modifications and early-return-to-work purchases are also available. Financial and management information for the first half of 2008 indicate that these benefits are being used more often than in the past.

A statutory change in 1995 permitted extension of the program to include workers with claims classified as nondisabling even though the workers have medical restrictions on the kinds of work they can perform. By getting workers back to a job shortly after injury, the EAIP has precluded many accepted nondisabling claims from becoming classified as disabling, because no temporary disability benefits are due and payable. An administrative rule change in December 2007 permits extension of the program to workers with claims where compensability ultimately was denied, but temporary disability benefits were due and payable while compensability was investigated.

Insurers may reduce or discontinue time-loss benefits if a worker refuses modified work, including an EAIP placement. Effective mid-2001, Senate Bill 485 gave injured workers the right to refuse modified work if the job requires a commute that is beyond the worker's physical ability, is more than 50 miles away, is not with the employer at injury or not at that employer's worksite, or is inconsistent with the employer's practices or a collective bargaining agreement.

Figure 16. Return-to-work flowchart



Note: This flow chart provides a general description of return-to-work programs. It omits many details. The time frames shown are those in statute and rule; exceptions to these time frames are not shown. Flow charts in the claims processing chapter and the disputes chapter provide additional information.

The- - - - - - - indicates potential path of process.

The peaks for EAIP use came in 1998, when the department approved 10,066 placements with 1,775 employers; and in 1999, during which 1,837 employers used the program for 9,440 workers. Program use has trended upward beginning in 2006. One inference is that statutory and administrative law changes have succeeded to some extent in improving access and participation. However, as with other return-to-work program indicators, economic conditions probably have an effect on these measures, too.

Measured at the 13th quarter after injury, employment and wage recovery rates have been consistently higher for workers with disabling claims where employers and insurers accessed Employer-at-Injury Program benefits. In 2008, the employment and wage recovery rates were both four points higher. These statistics are based on a comparison of workers released to regular work, but with significant severity indicators for temporary and permanent impairment.

While these outcomes are low compared to other programs, 12 years of consistently higher indicators for EAIP use at 3.25 years post-injury is remarkable in that EAIP use typically takes place in the quarter of or the first quarter after injury — about three years before the measurement. Research in progress provides more evidence that a wage recovery and employment advantage is sustained over a period of at least five years after injury.

Figure 17. Employer-at-Injury Program, placements approved, 1993-2007

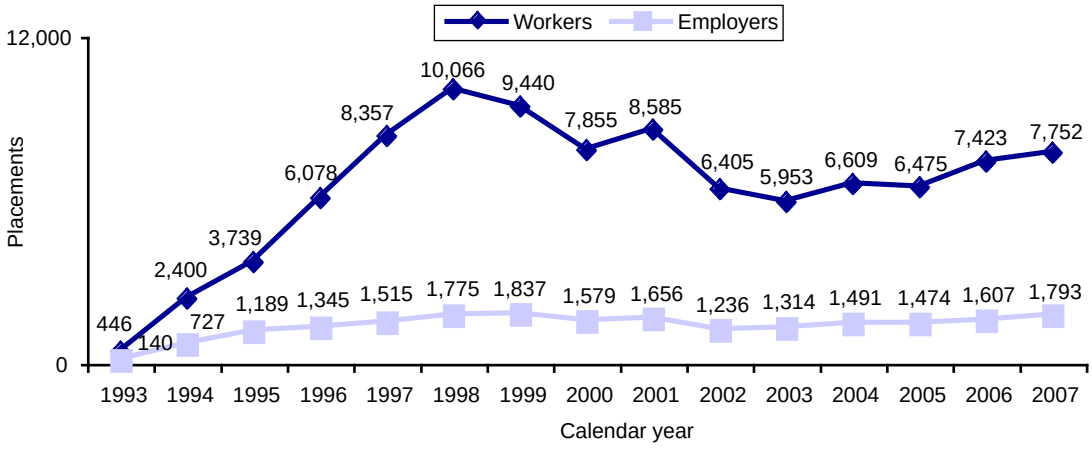
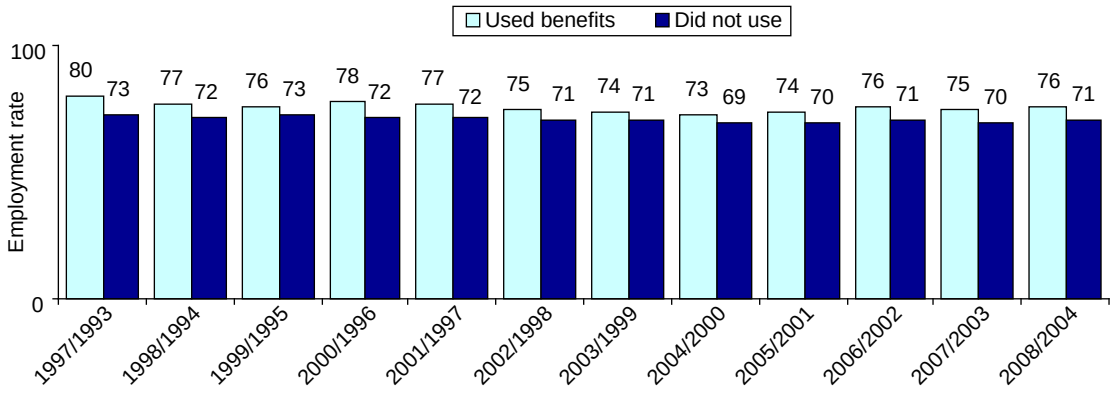


Figure 18. Employment rates for the Employer-at-Injury Program, FY 1997-2008



Preferred Worker Program

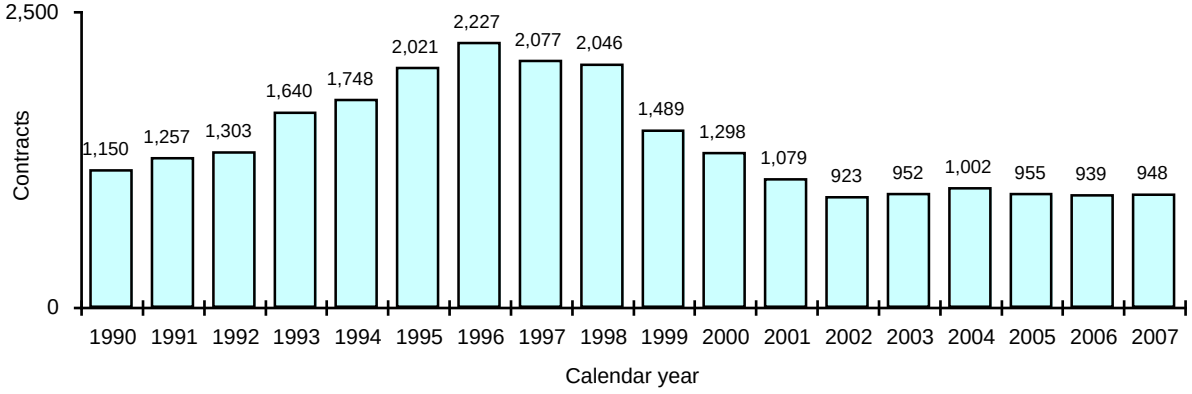
Although incentives such as wage subsidies and worksite modifications have been available for many years, the current version of the Preferred Worker Program was formed during the 1990 special session. Clarifications were added in 1995 through SB 369; notably, workers may not release these benefits through a claim disposition agreement. Senate Bill 119 (2005) expanded the program's options by enabling the payment for limited placement services contracted for on behalf of preferred workers.

The program's objective is to sustain disabled workers in modified regular or new employment as soon as permanent medical restrictions are known. A worker automatically receives a preferred worker identification card when the insurer reports that the worker has a work-related permanent disability preventing return to regular work. The card informs prospective employers that the worker may be eligible for the program's benefits. A worker may also request qualification as a preferred worker from the department. The department, not insurers, delivers benefits under the Preferred Worker Program.

An eligible employer who chooses to hire a preferred worker is exempt from workers' compensation premiums on the worker for three years. If the worker moves to another employer, premium exemption is transferred to the new employer for an additional three years. The department reimburses insurers for all claim costs, including administrative expenses, for any claims preferred workers file during the premium-exemption period.

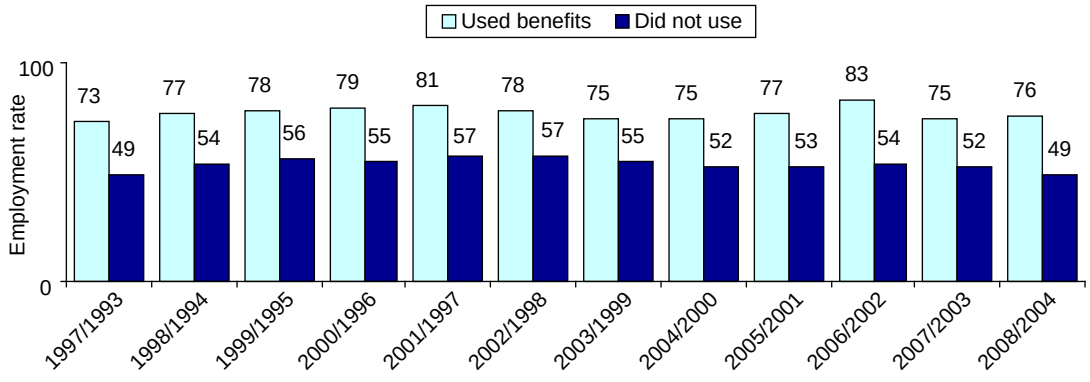
Three other benefits are available for preferred workers and employers. Wage subsidies provide 50 percent reimbursement for six months; higher benefits are available for exceptional levels of disability. Worksite modifications alter worksites within Oregon to accommodate the workers' restrictions. Employment purchases provide

Figure 19. Preferred worker contracts started, 1990-2007



Note: Premium exemption contracts and substantial modifications are no longer tracked and have been excluded from this series

Figure 20. Employment rates for preferred workers, FY 1997-2008



Fiscal year, 13th quarter after injury / calendar year of injury

uniforms, licenses, tools, worksite creation, and other benefits required to set up the preferred worker for employment. These benefits may be used more than once.

Administrative rule changes effective July 1, 2005, permit use of the program at the initiative of the employer at injury. A worker's entitlement to future program benefits is not affected if the worker accepts this option. Otherwise, use of the Preferred Worker Program is at the initiative of the injured worker and at the option of the prospective employer. Administrative rule changes effective Dec. 1, 2007, clarified that a preferred worker has no time limit on when to start using the program's benefits.

Benefit use among preferred workers is difficult to measure because some workers use benefits as soon as possible after becoming eligible, while others may wait for years. The statistical indicators point to peak use in 1996, falling drastically thereafter until stabilizing early in the current decade. Financial and management information for the first half of 2008 indicate that further rule changes effective in 2007 may be increasing benefit use.

Measured at the 13th quarter after injury, employment and wage recovery rates have been consistently higher for preferred workers who used the program's benefits, compared to preferred workers who did not. These statistics are based on a comparison of workers who were released to modified work at claim closure, excluding workers who were also eligible for vocational assistance. They offer a relatively short-term perspective on the efficacy of the program. However, large differences in wage recovery since 2005, in favor of benefit users, may be due in part to changes in administrative rules and statute.

Vocational assistance

Insurers provide vocational assistance, usually through professional rehabilitation organizations, to overcome limitations that prevent injured workers' return to suitable work. In 1987, more than 8,500 workers became newly eligible for vocational assistance plans to return to work, and more than 1,300 had their eligibility restored. Total reported benefits stood at $36.5 million, excluding the costs of eligibility determinations. The average cost of vocational assistance benefits was more than $4,000.

In 1987, the Legislature passed HB 2900, which significantly restricted eligibility for the vocational assistance program by introducing a new test, substantial handicap. In general, substantial handicap means that injured workers are eligible for vocational assistance only if a permanent disability prevents re-employment in any job paying at least 80 percent of the job-at-injury wage. One effect has been to exclude many minimum-wage earners from eligibility; HB 2900 also excluded from eligibility workers whose five-year aggravation rights had expired.

In 1995, the Legislature further restricted eligibility for vocational assistance for aggravation claims. Because of these legislative amendments, there have been fewer eligibilities for vocational assistance. The average has been around 740 each year since 1999. Total costs of benefits have also declined. Under current law, the typical eligible worker gets a training plan followed by direct employment (placement) services. In the past, many more workers returned to work through direct employment plans because they did not need retraining. Now, few workers receive only placement services under vocational assistance. As a result, the cost reduction has not been as steep as the reduction in the number of eligible workers.

Benefits available under vocational assistance include time-loss payments (worker subsistence) during training; purchases of goods and services, such as tuition; and professional rehabilitation services, such as plan development, counseling and guidance, and placement. For cases closed in 2007, reported as of May 2008, time-loss payments were an estimated $4.5 million, and insurers' reported expenditures for purchases were $1.7 million and for professional services, $2.3 million.

Eligible workers are not required to use vocational assistance benefits. Since at least 1987, less than one-half of eligible workers have received a plan following their eligibility determinations. Since 1995, less than one-third of workers have completed their plans — completion is defined as placement in a job or receipt of maximum services. The maximum service is 16 months of training (21 months for exceptional cases), plus four months of direct employment services.

In 1990, the claim disposition agreement (CDA) was legalized. With CDAs, workers release their rights to vocational assistance and most other disability benefits in exchange for lump-sum settlements. Since 1995, at least 50 percent of cases have ended with a CDA. In general, workers with permanent work restrictions who settle their claims have low post-injury employment rates and wages. Many of those workers do not use preferred worker benefits.

The de-emphasis of the vocational assistance program has resulted in few workers returning to work because of the program, just 132 cases in 2007.

However, workers who completed a vocational assistance plan have had better employment outcomes than eligible workers who did not complete their plans. Measured at 13 quarters after injury, employment rates have been at least 20 percent higher for workers who completed plans. Wage-recovery rates have shown similar advantages for workers who completed their plans. Note that the completion of a vocational assistance plan typically occurs in the third year after injury. These statistics, then, represent a relatively short-term perspective on the efficacy of the program.

Figure 21. Vocational assistance eligibilites, 1987-2007

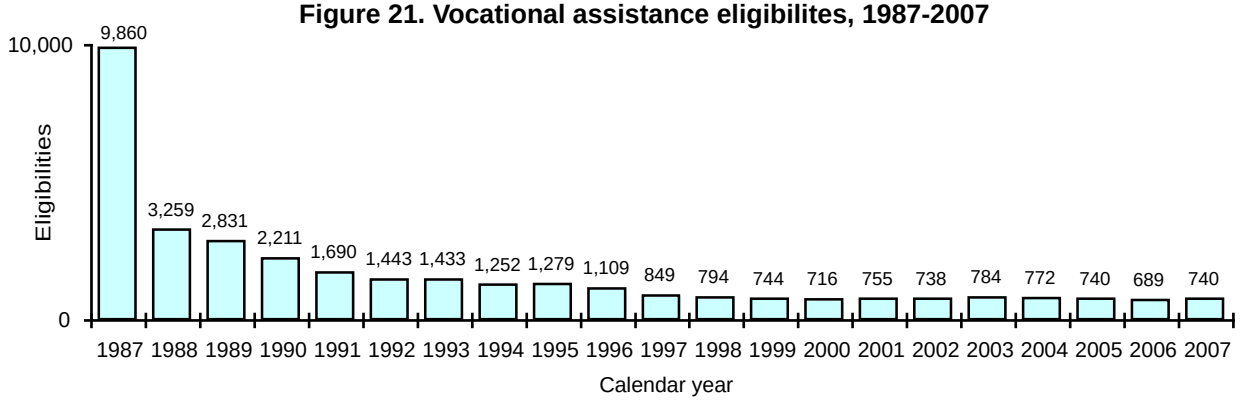
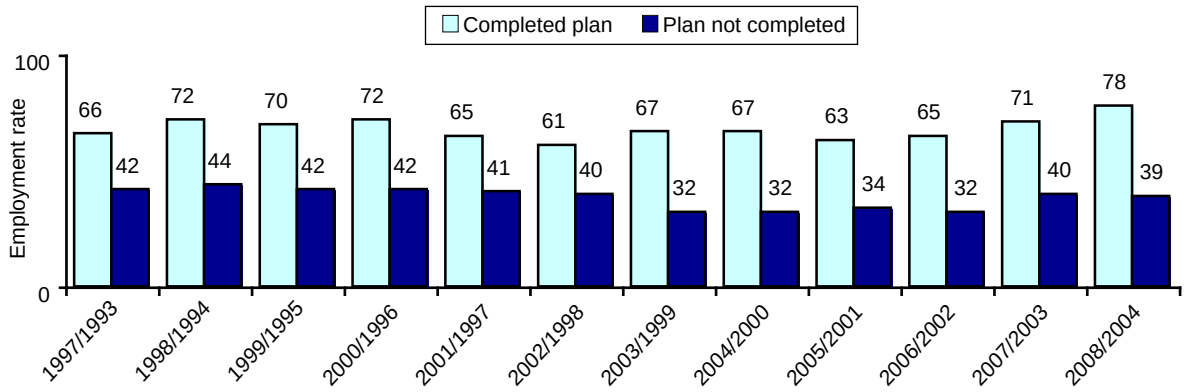


Figure 22. Employment rates for vocational assistance cases, FY 1997-2008



Fiscal year, 13th quarter after injury / calendar year