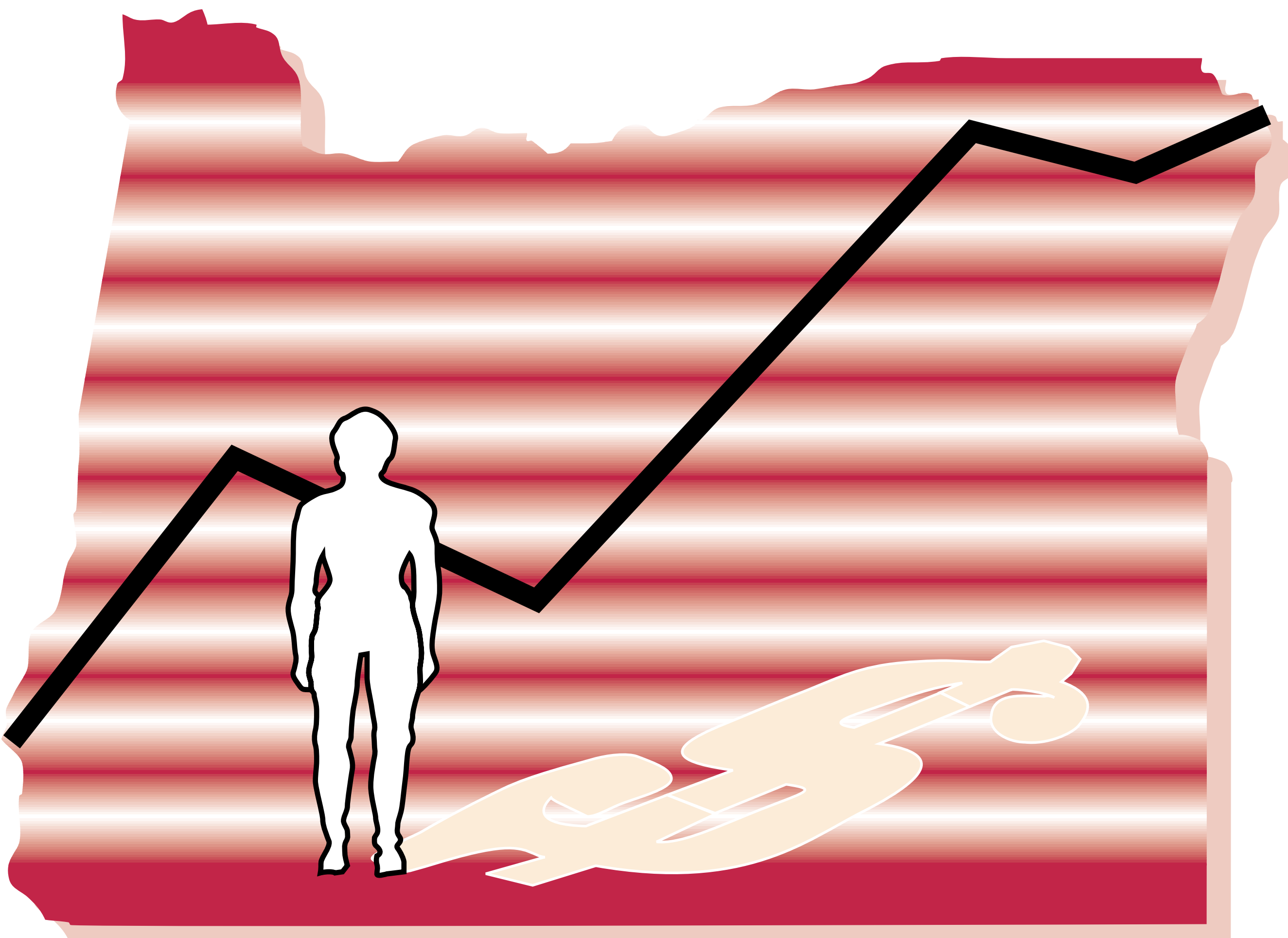
Oregon Permanent Partial Disability Benefits: Historical Trends and Interstate Comparisons

Research & Analysis Section
Oregon Department of Consumer & Business Services



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Highlights

- Permanent Partial Disability (PPD) benefit levels, as measured by maximum benefits, have risen from among the lowest in the nation during the 1980's to roughly the national median in 2000.

- A factor commonly ignored in PPD benefit comparisons is interstate variation in wage levels. In 1998, average weekly wages varied between 77 percent and 165 percent of Oregon. Controlling for interstate wage variations, Oregon maximum PPD benefit levels are somewhat below national medians. Oregon maximum benefit levels on 1-1-99 were 6 percent behind scheduled PPD national medians, and 15 percent behind unscheduled PPD national medians.

- PPD claim frequency in Oregon has dropped substantially during the 1990's, but remains above the national median by one measure.

- Some aspects of Oregon PPD benefits are unusual nationally. As a result, traditional comparisons of maximum benefits are inadequate to evaluate the relative generosity of Oregon benefits.

- Since 1992, unscheduled benefits have used a tiered structure, which compensates the most serious injuries more generously than less serious injuries.

- Most unscheduled PPD awards are paid at bottom-tier rates.

- While benefit maximums have grown, the bottom unscheduled benefit tier has declined in value relative to wages by over 25 percent from 1982 to 1999.

- Unlike most other states, Oregon PPD benefits are not tied to the worker's wage at injury. In comparison to states with more typical benefit structures, this results in relatively generous maximum benefits for some low-wage workers, particularly those with scheduled disabilities.

- For lower-tier unscheduled awards, which are more representative of typical claims, Oregon benefits are significantly below most other states, even some which appear far less generous in traditional comparisons of maximum PPD benefits.

Introduction

Over the last 10 years, workers' compensation has been a high-profile political issue, both in Oregon and many other states. One area of frequent contention has been Permanent Partial Disability (PPD) benefits. Claims involving PPD benefits are the most costly category of claims in most states' workers' compensation systems (see Table 1 for category definitions). In addition to benefit costs, PPD claims are often the most litigious of the various workers' compensation claims categories. The issue of PPD-related frictional costs—the indirect costs associated with determining entitlement to and delivery of benefits—has been a particular focus of policy makers in Oregon[1]. As a major cost driver for employers, and a major source of benefits for injured workers, PPD benefits have been the subject of much controversy in reform efforts nationally. Oregon reform efforts have resulted in changes affecting these benefits in the 1987, 1990, 1991, 1995, 1997, and 1999 legislative sessions.

At some level, it is important to keep in mind the underlying rationale for workers' compensation PPD benefits: to substantially replace lost wage income due to the work-related injury. Adequacy cannot be objectively defined because it is a function of the values of the observer. No compensation formula can perfectly account for differences in individual workers' abilities and disabilities, motivations, and life circumstances. Two identical injuries from a medical perspective may have a negligible impact on earnings in one case and a huge impact in another. Of necessity, compensation formulas must employ some approximation of lost earnings, or lost earning capacity, in order to be administratively workable. From a research perspective, what can be quantified to some degree is not benefit adequacy, but benefit generosity[2]. Comparisons of relative generosity may identify particular areas that need review, but adequacy judgments must be left to policy makers.

Since at least the early 1980's, Oregon PPD benefit maximums have been below national median benefit levels for comparable states—at times near the lowest in the nation. This in turn led to concerns about overall benefit adequacy of the Oregon system. Coupled with several premium rate increases in the mid 1980's, "costs too high, benefits too low" became the standard description of the Oregon system in the political discourse of the era.

Legislative action has resulted in significant increases in maximum benefit levels over the past decade. Nevertheless, benefit levels were still of sufficient concern in 1995 that the legislature specifically mandated study and reporting on benefit adequacy by the Workers' Compensation Management-Labor Advisory Committee in Senate Bill 369[3]. This report examines the relevant data reflecting on benefit adequacy, and gives some historical context for the discussion and comparison of benefit levels.

The closure and disability rating process

In the Oregon system, a workers' compensation claim involving compensation for lost time from work is known as a disabling claim. The process of claim closure begins when the worker is determined to be "medically stationary"; i.e., the medical condition is not expected to improve through additional time or treatment[4]. At this time a claim closure is issued, which ends time loss (Temporary Total Disability, or TTD) benefits and determines entitlement to permanent disability benefits, if any. The insurer may choose to issue the closure itself through a Notice of Closure (NOC) or request a closure by the Workers' Compensation Division Evaluation Unit ("Evaluation"), known as a Determination Order (DO).

Prior to 1979 legislation, insurers did not have authority to close claims and were required to request closure through Evaluation. The 1979 legislation granted insurers authority to close claims when there was no permanent disability. In 1987, insurer closure authority was expanded to include claims with permanent disability where the worker had returned to work, and again expanded in 1990 to include claims where the worker was released to work. The 1999 Legislature enacted legislation to phase out Evaluation closure services and to require that this function be performed by insurers. The phaseout will occur during the 1999-2001 biennium.

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[1] One measure of frictional costs—the share of PPD awards paid to claimant attorneys—declined by roughly half from 1988 to 1997. See the companion study *Permanent Partial Disability in the Oregon Workers' Compensation System, 1986-1997* (5/99), page 31.

[2] Several recent studies have attempted to determine the proportion of lost wages replaced by workers' compensation benefits. These studies compare benefits received to an estimate of wage losses to injured workers using post-injury wage data to derive a replacement rate for lost wages. See the Rand Corporation California study, (Peterson, Reville, Stern, and Barth, 1997) and the Workers' Compensation Research Institute Wisconsin study (Boden and Galizzi, 1998).

[3] See ORS 656.790 (3)(b).

[4] The closure process may be initiated in other circumstances also; most notably, when "the accepted injury is no longer the major contributing cause of the worker's combined or consequential conditions." See ORS 656.268 (1)(b).

Appeal processes for PPD disputes were modified dramatically in 1990 by SB 1197. Prior to the SB 1197 changes, appeals of closure-related issues, such as rating of extent of disability, went directly to the Hearings Division of the Workers' Compensation Board. In an effort to reduce litigation and speed up the rating process, the 1990 law changes introduced a mandatory administrative "reconsideration" of the closure before a hearing could be requested. The process included mandatory referral to an appointed "medical arbiter" if the impairment rating was challenged. Medical evidence at subsequent hearings was limited to that presented at reconsideration. A new unit within the Workers' Compensation Division was formed to carry out this function.

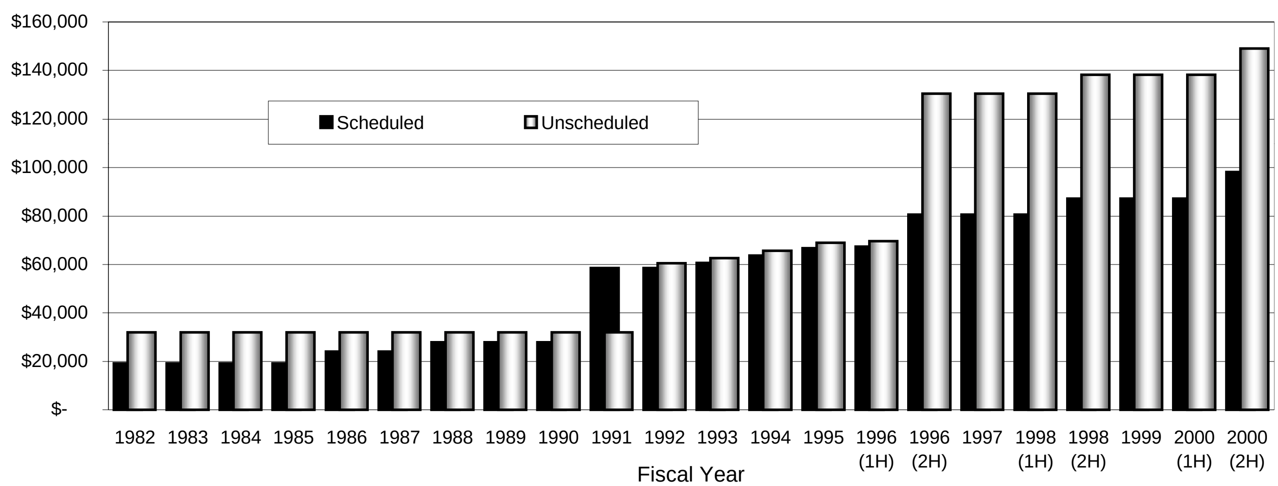
Disability rating definitions and rules have changed significantly from 1981 to the present. Prior to 1987 amendments, unscheduled disability was statutorily defined as "...the permanent loss of earning capacity due to the compensable injury. Earning capacity is the ability to obtain and hold gainful employment in the broad field of general occupations, taking into consideration such factors as age, education, training , skill, and work experience." These criteria were used by the WCD Evaluation Section (then the Evaluation Division) to develop complex rules to rate permanent disability. However, these rules were applied strictly only at the Evaluation level; they were used only as general guidelines upon appeal.

In 1987, HB 2900 mandated for the first time that PPD rating criteria be standardized across all levels of appeal. The legislation also simplified the criteria used in the unscheduled rating standards, specifying that the standards use "...permanent impairment as modified by the factors of age, education, and adaptability to perform a given job." The revised rating rules were implemented in July 1988. In the original version, there was an exception to the use of standards in rating when "clear and convincing evidence" at a hearing indicated entitlement to a different level of disability. This exception was repealed in 1990. Further modifications were made to the rating criteria by 1995 SB 369, which mandated that impairment would be the sole criterion for unscheduled disability rating when the worker is offered or returns to regular employment.

Recent history

Table 2 shows milestones affecting PPD award levels from 1981 to present[5] . 1981 is used as a starting point because it was the last year in which the legislature had established equal dollar amounts per degree for both scheduled and unscheduled disability. From the inception of the Oregon Workers' Compensation law to 1979, degree values had always been equal for both types of disability. In 1979, the legislature increased scheduled degree values to $100, while leaving unscheduled degrees at $85. The 1981 legislature restored the historical parity by increasing unscheduled degrees to $100 while leaving scheduled degrees unchanged. This parity continued until scheduled benefits were raised by the 1985 legislature to $125 per degree.

Figure 1. Maximum PPD benefit levels Oregon, FY 1982-2000



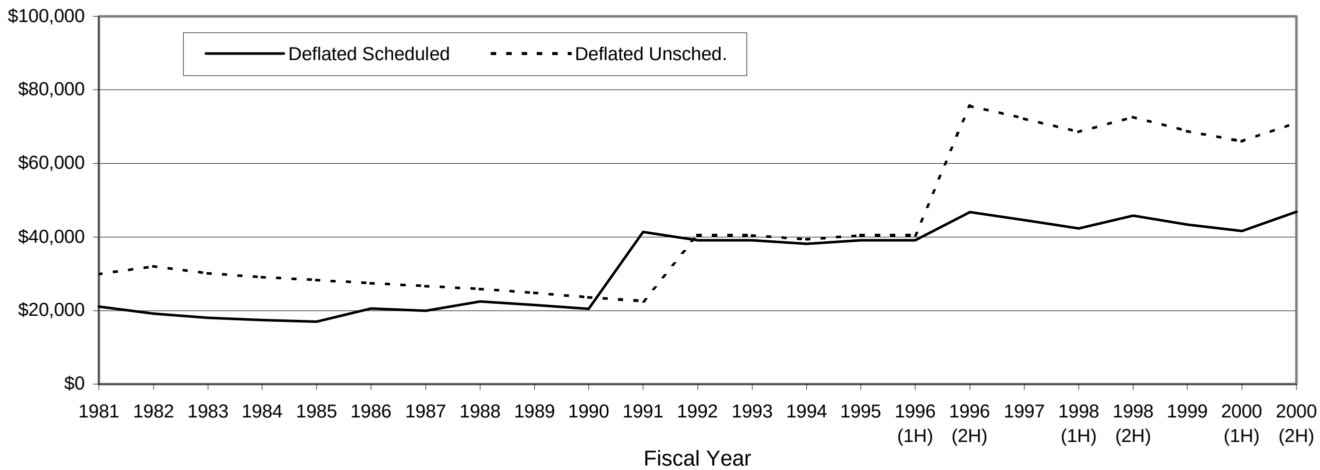
Keeping pace with inflation

One goal of a program designed to compensate for economic loss is to maintain the purchasing power of benefits over time. In the absence of a statutory formula to adjust for inflation (such as the 1992-1995 period, when PPD benefits were linked to the Average Weekly Wage), legislative enactments are necessary to keep benefit levels at constant purchasing power. As can be seen from Table 2 and Figure 1, statutory maximum benefit levels have had numerous increases since 1985. Figure 2 shows maximum benefit levels over time, deflated by changes in the Oregon Average Weekly Wage. Scheduled benefit increases in 1985 and 1987 brought inflation-adjusted benefit levels somewhat above what they had been in 1981. The 1990 increase in scheduled benefits brought the trend line well above previous levels, with the 1996 change providing a benefit level increase in excess of wage inflation.

[5] The second half of calendar year 1981 is also the first half of state fiscal year 1982.

For unscheduled benefits, the trend line shows how real (inflation-adjusted) benefit levels eroded while maximums remained constant from 1981 through 1991. Real unscheduled benefit levels dropped by a third over this ten-year span. The 1991 (SB 732, effective 1/1/92) changes to benefits are notable for the introduction of two new concepts: first, SB 732 was the inception of the "tiered" benefit structure for unscheduled PPD; second, it indexed PPD benefit values to the Statewide Average Weekly Wage, providing an automatic inflation adjustment similar to other benefit types. The indexing effect can be seen in the level trend line over this period. The indexing was ended (effective 1/1/96) by 1995 SB 369, which also increased upper-tier degree values to well above what they had been under the prior law. This increase moved maximum unscheduled benefits to a level far above any in recent history, more than twice the 1981 maximum in real terms.

Figure 2. Maximum PPD benefit levels deflated by wage changes, Oregon, FY 1981-2000

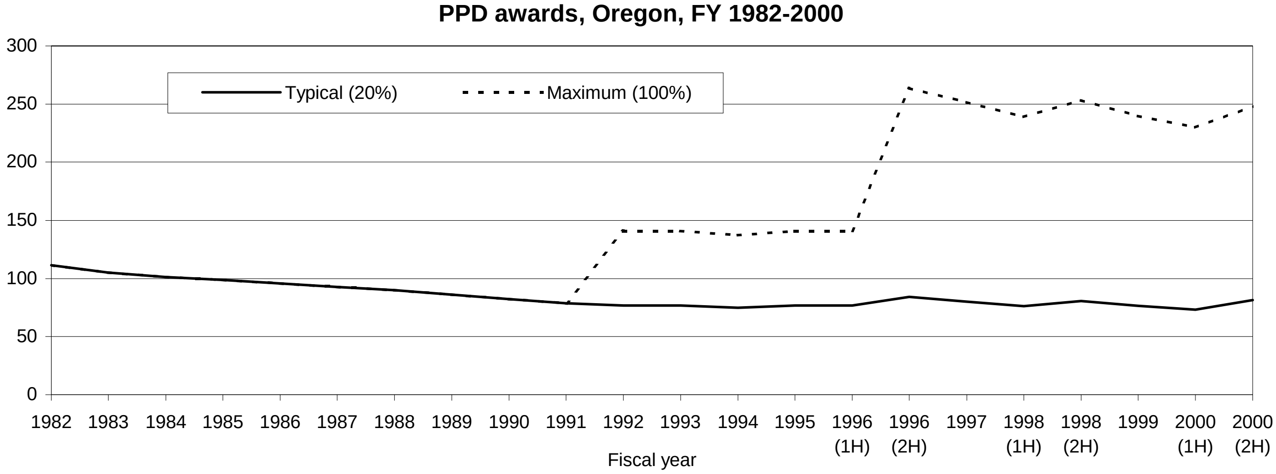


How well do Oregon PPD benefits compensate for wage loss?

Considering that unscheduled PPD is designed to compensate for "permanent loss of earning capacity" and is rated as a percentage of the whole person, it may be useful to evaluate Oregon benefits by the amount of wage loss replaced. Note that there is no directly comparable wage-loss concept in the statutory definition of scheduled PPD, which is based on impairment of a specified body part in Oregon.

To compute wage replacement in the absence of actual wage history data, it is necessary to make some assumptions about lost wages. For this analysis, we assume that the earning loss is equal to the rated loss of earning capacity. Thus, a worker with pre-injury earnings of $500 per week and 30 percent unscheduled disability would have $150 per week of assumed wage loss. An unscheduled PPD award of $15,000 would replace 100 weeks of lost wages for this worker. Figure 3 shows how Oregon benefits for unscheduled PPD have replaced wages for workers earning the statewide average. As of January 2000, wage replacement for unscheduled PPD for a worker earning the current Statewide Average Weekly Wage is equivalent to 81 weeks for a disability of 20 percent or less, and 248 weeks at the maximum.

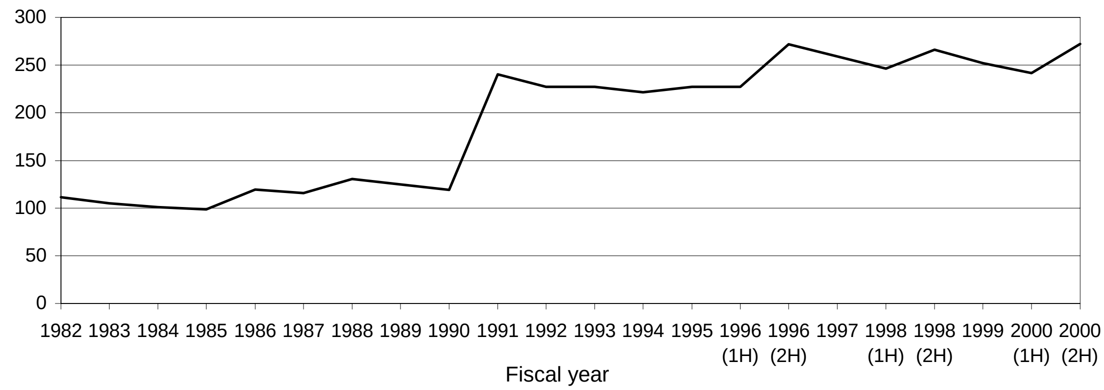
Figure 3. Weeks of replaced wage loss for an average wage worker, 20 percent and 100 percent unscheduled PPD awards, Oregon, FY 1982-2000



Two major observations can be drawn from Figure 3. First, the 1992 change to a tiered benefit structure for unscheduled disability has created a divergence between dollar values for maximum awards and benefits for more typical claims (average awards per unscheduled claim have been below 64 degrees, or 20 percent disability, since 1990). Second, lower-tier benefit levels, as measured by the criterion of weeks of replaced wage loss, have declined considerably since 1982. Despite several legislated increases during the 1990s, lower-tier benefits have been stagnant relative to wages over the past decade.

While this computation is less meaningful for scheduled disability because of its different statutory definition, the wage-replacement figure can be calculated with the assumption that the wage loss is proportional to the number of degrees assigned to the "whole person," or 320 degrees. In the case of loss of arm, the 192-degree maximum represents 60 percent of a whole person. Using the 60 percent figure yields the scheduled line in Figure 4. The trend line shows the dramatic effect of the increases enacted in 1990 in Senate Bill 1197, followed by less significant increases in the years since.

Figure 4. Weeks of replaced wage loss for an average-wage worker, 100 percent scheduled PPD (loss of arm), Oregon, FY 1982-2000



Interstate comparisons

Because any evaluation of benefit adequacy is necessarily subjective, researchers and policy makers have searched for more objective means of comparing benefits provided by various states' workers' compensation systems. A common practice in the 1990's has been "benchmarking" performance or results against similar programs elsewhere. In the area of workers' compensation benefits, this has taken the form of interstate benefit comparisons.

It is axiomatic that the usefulness of benchmarks is directly related to the comparability of the underlying data. Unfortunately, PPD benefit comparisons necessarily come up against two formidable obstacles: the disparate benefit structures adopted by the various states, and capturing the multiple facets of benefits actually provided despite limited data. There is no single nationwide source of comparable claims data from which benefit comparisons can be made. Data from the National Council on Compensation Insurance, an insurance ratemaking organization, covers roughly 40 states, although its data are of limited use for comparing statutory benefit levels. The U.S. Department of Labor and U.S. Chamber of Commerce both publish some information on statutory features of workers' compensation laws, but neither collects nor publishes claims data. Academic researchers and private research organizations such as the Workers' Compensation Research Institute have provided valuable research into individual states' systems, but benefit comparisons have generally been limited to a handful of states at most[6].

Given these limitations, what benefit comparisons are feasible? With limited resources, it is not possible to produce comparisons which encompass the entire "benefit package" to which an injured worker may be entitled—medical care, time loss benefits, vocational assistance, PPD, and so on. Some system features, such as reinstatement rights and access to expert information, are intangible from a monetary perspective but can be of great value to injured workers. Using available published data, the best that can be accomplished is to shed light on various facets that affect PPD benefits, such as frequency with which benefits are awarded, statutory benefit levels, and how benefits compare to wages in the respective states.

Other aspects of PPD benefits are beyond the scope of this paper, but are briefly enumerated here:

[6] Two recent publications of the Workers' Compensation Research Institute are notable for interstate comparisons of PPD benefits: *Permanent Partial Disability Benefits: Interstate Differences* (9/99,) and *Variations in Costs and Benefits within Four Large States* (11/99).

- Because of the diverse criteria used in various states' definitions of PPD, identical conditions may be rated differently. What may routinely be rated as a 25 percent disability in one state may be 40 percent in another. Because of different rating criteria, certain facts may be of great importance in one state's rating scheme but excluded entirely in another state's. Similarly, some conditions may qualify for PPD benefits in some states but not in others.

- Litigation and lump-sum settlements: many states' systems have high rates of litigation and frequent settlements by lump-sum payment of all outstanding claim liabilities. The scope of what may be released, as well as settlement practices, vary considerably from state to state. A typical lump-sum settlement does not include an explicit rating of disability or allocation to each benefit type, so analysis of these amounts is speculative at best[7].

- Unlike Oregon, most states tie PPD benefit levels to the worker's wage at injury. In these states, maximum benefit levels generally adjust automatically with annual changes in weekly benefit maximums.

PPD claim frequency. Data from the National Council on Compensation Insurance show frequency of claims classified as PPD[8] per 100,000 insured employees. PPD claim frequencies can vary considerably by jurisdiction: the jurisdiction with the highest frequency (Oklahoma, 1,251) had a PPD claim frequency over ten times the lowest-frequency jurisdiction (District of Columbia, 113). The variation in PPD claim frequency as a share of total claims is almost as large: almost an eightfold difference between the highest and lowest states. While the published frequency for PPD claims in Oregon has trended downward in recent years, Oregon's frequency of 761 per 100,000 workers is still the sixth highest of 45 jurisdictions listed by NCCI.[9] This may be influenced by several factors: differences in industrial mix and insurance arrangements, higher claims rates overall, and a higher proportion of claims qualifying for PPD.

Benefit maximums. As of 1/1/99, Oregon maximum PPD benefits were slightly below national medians for states with comparable benefit structures[10]. Table 3 shows PPD benefit maximums by state. Oregon's maximum benefit for unscheduled PPD is roughly six percent below the national median, while the maximum for scheduled PPD is roughly eight percent below the median. Benefit increases taking effect on 1/1/2000 are expected to bring benefit maximums in line with projected national medians. However, comprehensive data on national medians for the year 2000 had not been published as the time of writing of this publication, and thus 1999 maximums are used for comparisons.

Comparisons of benefit maximums, considering wage levels. One major drawback of simple comparison of benefit maximums is that it does not consider wage levels in the state being compared. Is it accurate to make judgments about the adequacy of benefits without taking wage level differences into consideration? How can benefits in Arkansas, where workers averaged $470 per week, be compared with Alaska, where 1998 weekly wages averaged $651 per week, or 39 percent higher?

One way to take these differences into account is to express benefits as a multiple of the state's average weekly wage. Looking at the two states in the example above, the 1/1/99 maximum benefits for an unscheduled disability are $135,000 in Alaska and $117,450 in Arkansas. Dividing these figures by the state's average weekly wage gives a more accurate picture: the Alaska maximum represents 207.5 weeks of wages for the average worker in that state, while the Arkansas benefit represents 269.2 weeks of wages. Thus it would appear that the Arkansas benefit is actually significantly more generous, given local wage levels.

The Benefit Level Index (BLI) is a means of expressing how states' maximum PPD benefits with respect to wage levels compare to the national median state. To compute the index, the states are ranked in order of benefit maximums as a multiple of that state's average weekly wage[11]. The median (middle)

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[7] For further discussion on the effects of lump-sum settlements in Oregon, see the companion study *Permanent Partial Disability in the Oregon Workers' Compensation System, 1986-199* (5/99), page 31.

[8] The definition of PPD claim type used by NCCI includes more than claims with PPD awards. For example, it also includes claims with lump sum settlements (Disputed Claim Settlements, Claim Disposition Agreements) and claims with extended time loss and no formal PPD award. This definition is used only for NCCI data. Other references to PPD claims in this report generally pertain to only those claims with actual awards of PPD.

[9] Oregon's published PPD frequency has declined both in related and absolute terms. Oregon had been ranked highest nationally in the 1991 publication. NCCI *Annual Statistical Bulletin*, 1999 Edition.

[10] 1999 SB 460 raised these benefit levels to just above 1999 national medians, effective 1/1/2000.

[11] For better consistency across states, Unemployment Insurance covered wage averages (US Bureau of Labor Statistics ES-202 program) were used rather than average weekly wages as defined in state workers' compensation laws.

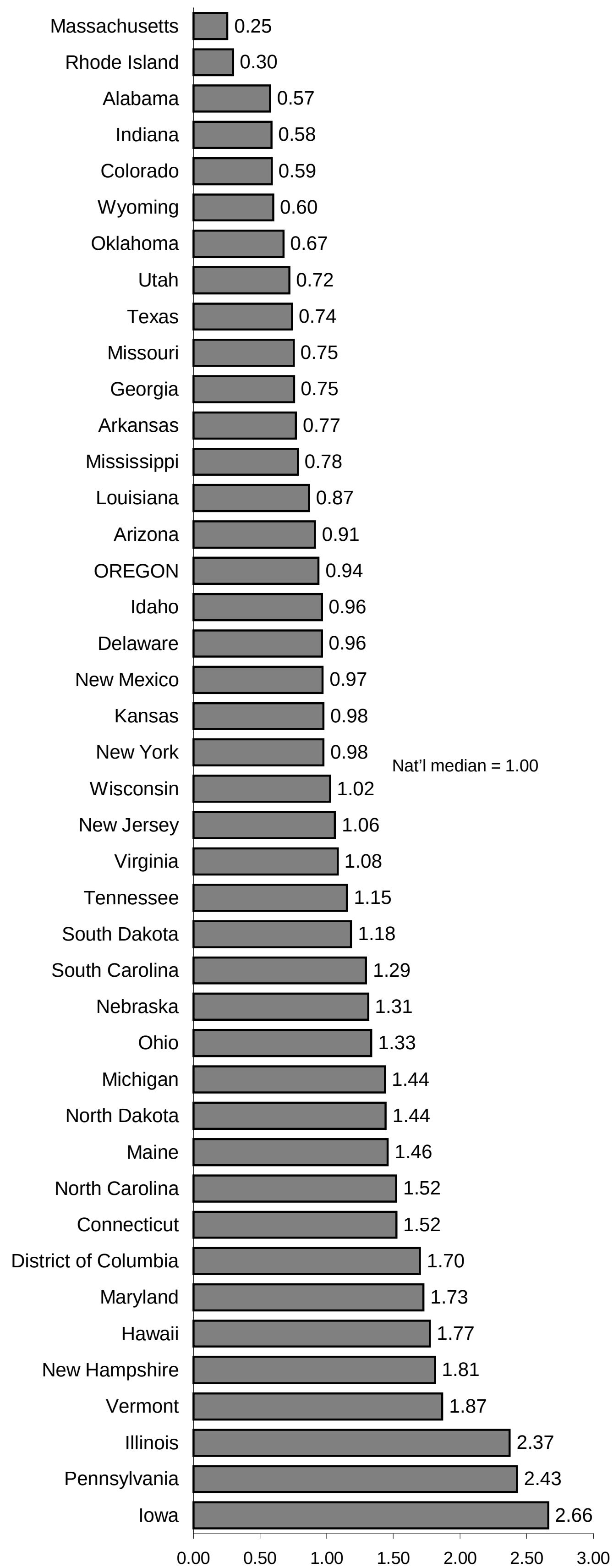
value is chosen from this ranking. Then each state's maximum PPD benefit as a multiple of wages is expressed as an index value, with the median state value set as 1.00. Looking at the example states of Alaska and Arkansas, unscheduled PPD benefits for Arkansas are more generous than those for Alaska as implied by their respective Benefit Level Indexes of 0.94 and 0.72. These scores would indicate that Arkansas is 6 percent below the national median state and Alaska is 28 percent below the median state.

The BLI scores for Oregon (0.94 scheduled, 0.85 unscheduled) indicate that Oregon 1999 PPD benefits are 6 and 15 percent behind national medians respectively. In Oregon's case, this is fairly consistent with a comparison of overall maximum benefit levels, although Oregon is slightly further behind national medians by the BLI method. Stated another way, when interstate wage differences are taken into account, Oregon 1999 PPD benefit maximums are roughly 6 to 15 percent below national medians. BLI scores by state are displayed in Figures 5 and 6. Computation details can be found in Table 3.

The effects of tiered benefits. In Oregon and a handful of other states, benefit structures use a progressive or tiered approach. This applies only to unscheduled benefits in Oregon. Degrees above the threshold values (currently 64 and 160 degrees, or 20 percent and 50 percent disability respectively) are valued at higher rates. The structure has become more progressive since its initial implementation in 1992. In the original tiered structure, a top-tier degree was valued at roughly three times the value of a bottom-tier degree. In the current structure, a top-tier degree is worth 4.8 times as much[12]. Thus, at least in the unscheduled area, recent benefit increases have been focused primarily on the most seriously disabled among workers who qualify for PPD awards.

As discussed earlier, the Benefit Level Index is an improved way of comparing maximum PPD benefits across states. However, with the advent of a tiered benefit structure for Oregon unscheduled PPD, maximums tell an incomplete story of benefit level changes. This is because the distribution of claims by disability level in Oregon is highly skewed toward the bottom end of the scale. Over 70 percent of all claims with unscheduled PPD have awards of less than 20 percent (64 degrees), and this proportion has been growing throughout the 1990's[13]. Figure 7 shows the distribution of claims with unscheduled PPD by benefit tier.

Figure 5. Scheduled PPD benefit level index for maximums as of 1/1/99



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12. 4.6 times as much at 1/2000 benefit levels.

13 To an unknown extent, other compensation mechanisms such as the CDA have replaced PPD benefits in some claims. It is likely that this has affected the distribution of PPD claims by disability level. Estimated CDA dollar amounts for release of PPD have represented 18-20 percent of gross PPD and PPD/CDA amounts in recent years. This estimated PPD/CDA amount cannot be reliably allocated to unscheduled degree tiers, however. See the companion study, Permanent Partial Disability in the Oregon Workers' Compensation System, 1986-1997 (5/99), pages 30-31.

Figure 6. Unscheduled PPD benefit level index for maximums of 1/1/99

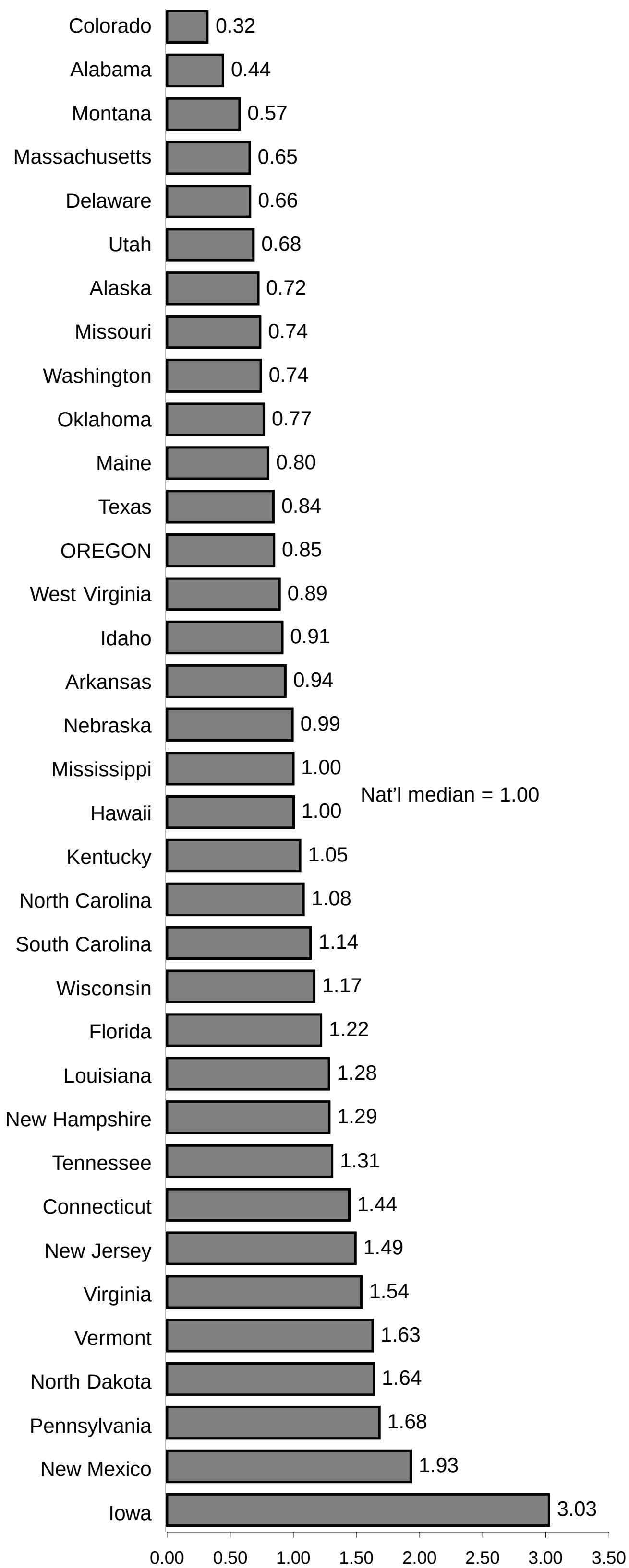
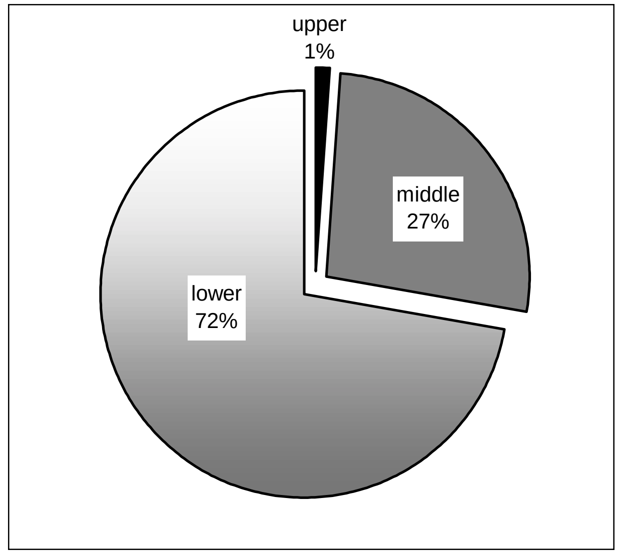


Figure 7. Percent of unscheduled PPD claims by degree tier, Oregon, 1997

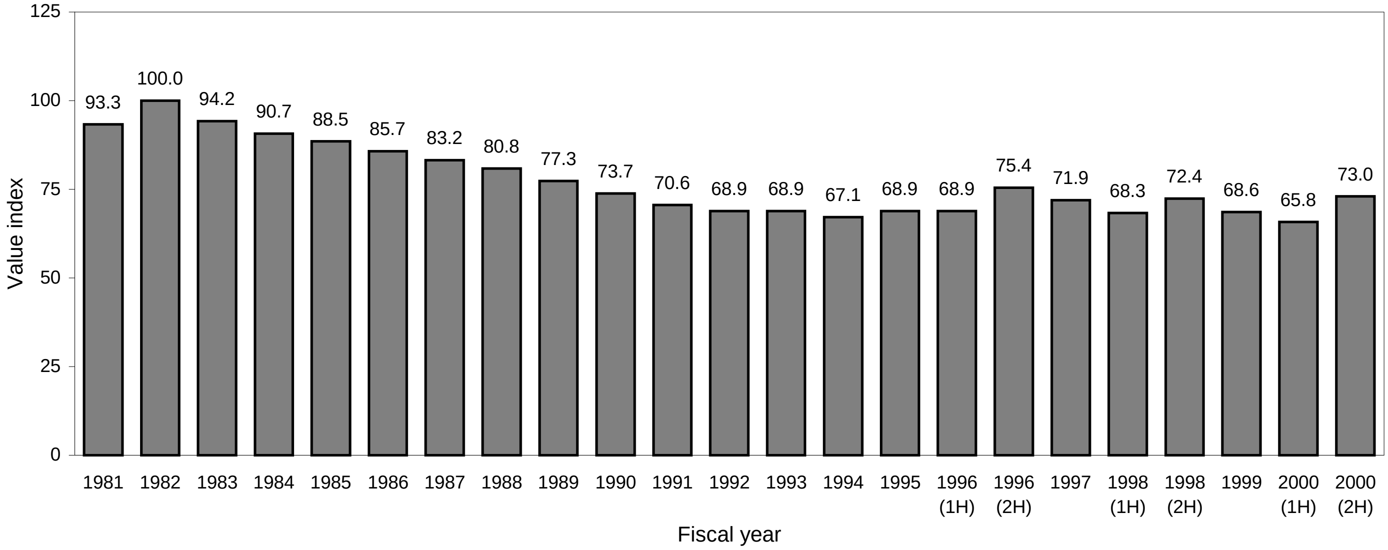


Average unscheduled degree awards have been declining since 1993. In 1997, the average unscheduled PPD award was 50.7 degrees, or just under 16 percent disability. Over 80 percent of unscheduled degrees awarded are paid at the lower-tier rate[14], while fewer than one percent of degrees awarded are paid at the top-tier rate. Because most PPD awards are comprised of only bottom-tier degrees, it is essential to look at how bottom-tier benefit levels have kept pace with inflation. One method of expressing this is through indexing PPD award amounts relative to wage changes from a base year. Figure 8 depicts index values (FY1982=100) for a 20 percent unscheduled PPD award for fiscal years 1981-2000. From the trend, it can be seen that unscheduled benefit levels for less-severe injuries have eroded significantly over the time span shown. At its lowest point, a 20 percent unscheduled PPD award was worth 34 percent less than it had been in 1981. Despite increases enacted in 1991, 1995, 1997, and 1999, an award of 20 percent unscheduled PPD has lost 27 percent of its value in 1981 (fiscal year 1982) wages. The combined effect of benefit increases through the 1990's has been to keep lower-tier awards at about the same level they had been in 1990.

Other structural differences. One aspect of Oregon's PPD benefit structure which is unusual nationally is that PPD benefits are independent of the worker's wage level. In Oregon, a worker earning $7.00 per hour is entitled to the same PPD benefit as a worker earning $20.00 per hour. The more common arrangement is for the statute to specify PPD as a certain number of weeks of benefits, paid at the worker's time-loss compensation rate. For states that employ this structure, the

[14] Note that percentage distributions by tier are different for claims and degrees, because all upper-tier claims contain lower-tier degrees.

Figure 8. Value of a 20 percent unscheduled PPD award indexed by changes in wages, (1982=100)



effective maximum for low-wage workers is far lower than the published statutory maximum[15].

The three-state comparison

A comparison with two other states illustrates this complex interaction of benefit structures and wage rates. It also illustrates why looking only at maximum benefit levels is a deficient method of comparing benefit generosity. These states were chosen for comparison purposes as having typical wage-based benefit structures, and being well above or below Oregon when comparing maximum benefit levels. Text Table 1 summarizes some aspects of benefits for unscheduled PPD for Oregon, North Carolina, and Utah as of 1-1-99 benefit levels.

From this table, it appears that Oregon is generally in the middle of these three states in PPD benefit generosity. Oregon is considerably more generous than Utah, but less generous than North Carolina. This holds true both in terms of absolute maximums and Benefit Level Index. Table 3 shows how these states rank nationally among those with published maximums.

Text Table 1. Benefit characteristics of three comparison states

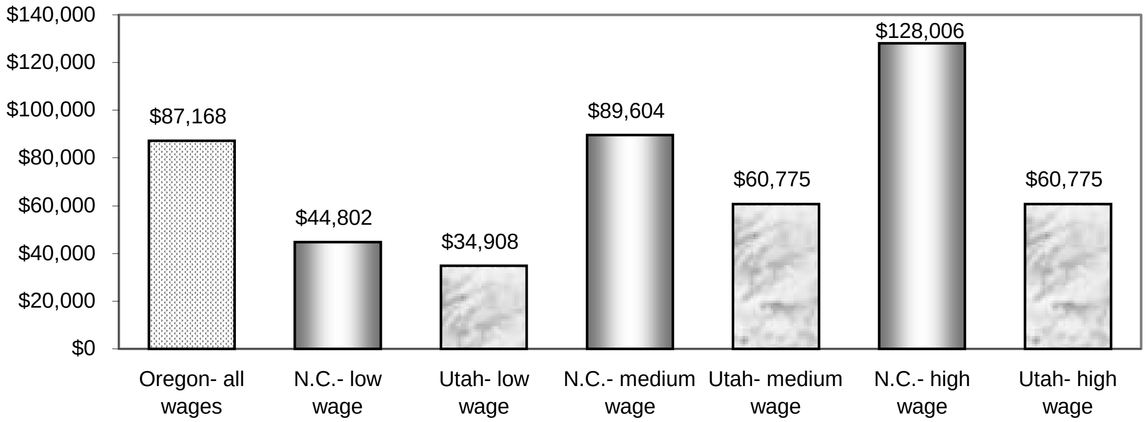
Characteristic	Oregon	North Carolina	Utah
Average weekly wage (1998)[1]	$568	$541	$517
Published maximum (uns. PPD)	$138,224	$168,000	$101,400
Benefit level index (uns. PPD)	0.85	1.08	0.68
Unscheduled rank[2] (weeks of wages)	23	15	30
Published maximum (sch. PPD—arm)	$87,168	$134,400	$60,775
Benefit level index (sch. PPD)	0.94	1.52	0.68
Scheduled rank[3] (weeks of wages)	27	10	35

[1]Annual average ES-202 covered wages
[2] Of 35 comparable states; 1= highest
[3] Of 42 comparable states; 1= highest

[15] In a state where individual PPD benefits are set as a multiple of the worker's wage at injury, only workers whose wages at injury meet or exceed the statutory weekly maximum for TTD benefits (the most common maximum is the Statewide Average Weekly Wage) also qualify for the maximum PPD award. A similar benefit structure would reduce the effective PPD maximum for the roughly 90 percent of Oregon injured workers whose wages are below the statutory ceiling for Temporary Total Disability benefits.

The three-state comparison shows how Oregon's wage-independent benefit structure affects scheduled benefit generosity. The wage-based comparison for scheduled benefits is shown in Figure 9 and Text Table 2. For low-wage workers, Oregon scheduled benefits are roughly twice those of North Carolina. Maximum benefits in Oregon and North Carolina are nearly equal for the medium-wage group, despite the published maximum being 54 percent higher in North Carolina. Oregon published maximum benefits are roughly 37 percent above Utah, but for low-wage workers, scheduled benefits are 150 percent higher.

Figure 9. Benefits by state and wage level for scheduled maximum PPD, 1/1/99



Text Table 2. Effective maximum scheduled PPD benefit by wage level, 1/1/99

Wage level	Oregon	North Carolina	Utah
Low ($280.00/week)	$87,168	$44,802	$34,908
Medium ($560.00/week)	$87,168	$89,604	$60,775
High ($800.00/week)	$87,168	$128,006	$60,775

The breakdown of maximum benefits by wage level in Text Table 3 below shows how Oregon's wage-independent unscheduled PPD maximums are relatively more generous for lower-wage workers. Comparing Oregon with North Carolina illustrates the difference clearly: North Carolina's theoretical maximum is higher, but for a low-wage worker, the effective maximum is less than half of Oregon's. Note also that under the North Carolina benefit structure, even a relatively high-wage worker earning $800.00 per week does not qualify for the full statutory maximum of $168,000.

Text Table 3. Effective maximum unscheduled PPD benefit by wage level, 1/1/99

Wage level	Oregon	North Carolina	Utah
Low ($280.00/week)	$138,224	$56,028	$58,269
Medium ($560.00/week)	$138,224	$112,056	$101,400
High ($800.00/week)	$138,224	$160,080	$101,400

For unscheduled benefits, however, adding the dimensions of the worker's wage and disability level to the analysis reveals much more about how Oregon's benefit structure affects a given worker. Because Oregon's unscheduled PPD benefits are based on a "tiered" dollar value per degree, benefits for a 50 percent disability are less than one-fourth the benefits for a 100 percent disability[16]. Text Table 4 shows the percentage of the Oregon maximum benefit represented by various partial awards.

[16] An Oregon award of 50 percent unscheduled PPD is worth $32,224, or 23.3 percent of the maximum of $138,224 (1/1/99 benefit levels).

Text Table 4. Value of benefits for unscheduled PPD awards, Oregon, 1999

Percent disability	10	20	40	60	100
Degrees	32	64	128	192	320
Dollar amount	$4,410	$8,819	$24,422	$53,424	$138,224
Percent of maximum $	3.2%	6.4%	17.7%	38.7%	100.0%

A table comparing Oregon, North Carolina, and Utah is presented as Table 4. One method of representing this graphically for two levels of partial disability is found below in Figures 10 and 11. These show how benefits for a worker in each of those states, at a given wage and disability level, compare to Oregon benefits.

Figure 10. Benefits by state and wage level for 60 percent unscheduled PPD, 1/1/99

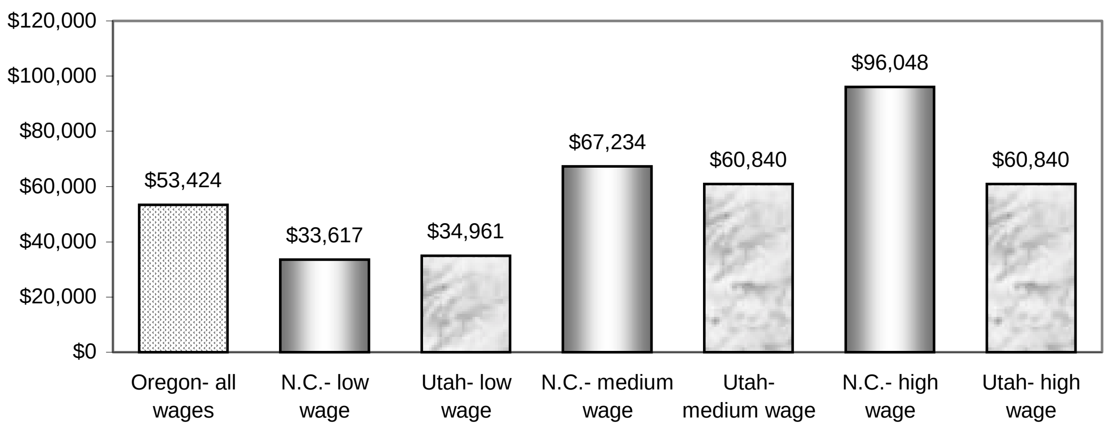
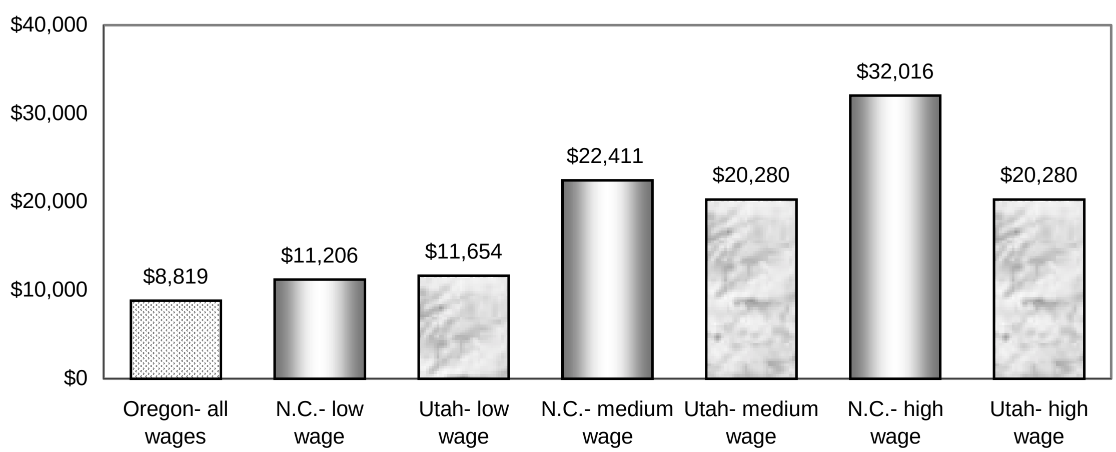


Figure 11. Benefits by state and wage level for 20 percent unscheduled PPD, 1/1/99



These charts show how comparing unscheduled maximum benefits alone can be misleading. Using maximums alone or wage-adjusted maximums, Utah is in the bottom fifth nationally and appears much less generous than Oregon. However, for awards of 10 to 20 percent disability—more typical of unscheduled PPD recipients[17] —Utah workers would receive benefits at least 30 percent higher than Oregon. This figure rises to more than double for medium- and high-wage workers. Conversely, while the North Carolina maximum is higher than Oregon, low-wage workers with the highest disability ratings would receive more generous benefits from the Oregon system[18].

Summarizing the Oregon PPD Benefit Picture

Oregon's recent increases in maximum PPD benefit levels have been well documented. However, it should be clear that comparing maximums alone cannot give a complete picture of the relative generosity of Oregon PPD benefits. Using the additional perspectives of historical benefit trends, interstate comparisons, and wage level differences, some generalizations can be made about which groups of Oregon workers are more or less generously compensated by PPD benefits.

- Oregon has made great strides in bringing maximum benefit levels close to national medians. Prior to 1990, Oregon PPD maximums were among the lowest in the nation. Subsequent increases have brought Oregon benefits near to national medians, or slightly below when interstate wage variations are considered.
- Oregon benefits are relatively low for most workers with unscheduled disability. Unscheduled benefit increases since 1991 have been structured in benefit tiers. Because of the relatively low compensation for the lower tiers of the Oregon benefit structure, workers receive less for lower-tier (rating of 20 percent or less) unscheduled disability awards than in the comparison states. A telling comparison is to benefits in Utah, which has maximums well below either Oregon or national medians. Yet Utah benefits are more than twice as generous as Oregon for workers of roughly average wage and disability levels.
- Oregon's lower-tier unscheduled degree values have not kept pace with wage growth. Lower-tier disabilities account for over 70 percent of claims, and over 80 percent of unscheduled degrees awarded. Despite increases in lower-tier degree values, these benefits have lagged behind wage growth, losing over one fourth of their value since Fiscal Year 1982.
- Oregon benefits are relatively generous for a small segment of workers with low wages and high unscheduled disability ratings. For an injured worker earning close to minimum wage with unscheduled disability near 100 percent, the Oregon benefit structure provides more benefits, theoretically over twice those of the comparison states. However, very few injured workers actually qualify for this level of benefits.
- Oregon benefits for scheduled disabilities, particularly for lower-wage workers, are relatively generous. From a historical perspective, all Oregon workers with scheduled disabilities have been compensated more generously in recent years due to increases in degree values. From an interstate comparison perspective, Oregon's wage-independent benefit structure yields higher scheduled PPD benefits for low-wage workers than would be received in most other states. Scheduled maximums are slightly below current national medians when interstate wage variations are taken into account.

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[17] The average unscheduled PPD award for Oregon in 1998 was roughly 16 percent disability (49.9 degrees).

[18] The low-wage, high-PPD cohort contains a minuscule share of unscheduled PPD claims in Oregon: in 1997, only 7 (0.2 percent) of roughly 3,600 unscheduled PPD claims had wages of $280.00 per week or less and disability of 60 percent or more.

Tables

Table 1

Essential Terminology

Benefit categories

TPD **Temporary Partial Disability**
A type of benefit paid as compensation for lost wages due to partial incapacity during the recovery period.

TTD **Temporary Total Disability**
A type of benefit paid as compensation for lost wages due to total incapacity during the recovery period. Also called **time loss** benefits.

PPD **Permanent Partial Disability**
A type of benefit paid in compensation for permanent, partial loss of earning capacity. There are two types of PPD, scheduled and unscheduled, depending on the body part disabled.

PTD **Permanent Total Disability**
A type of benefit paid in compensation for total loss of ability to obtain or hold gainful employment.

Impairment and disability

While these terms overlap in meaning, they are not the same. ***Impairment*** is more narrowly defined as loss of anatomical function without consideration of economic loss. ***Disability*** can have many meanings, but in a workers' compensation context, it concerns work disability which leads to actual or potential loss of earnings.

Scheduled/unscheduled PPD

Like most states, Oregon makes a statutory distinction among injured body parts in both benefit levels and the definition of permanent partial disability. For a number of specified body parts—fingers, hands, arms, legs, sight, and hearing among them—benefits are specified or "scheduled" in the law. For all remaining body parts, benefits are determined in relation to a maximum set for the "whole person." These are known as "unscheduled" benefits. The two types of PPD benefits are rated, or "determined," based on different criteria. Benefits for scheduled PPD are based solely on the impairment of the injured body part. Unscheduled PPD benefits are based on "loss of earning capacity," which is defined as impairment modified by the additional criteria of age, education, and adaptability to a given job.

Benefit type and claim type

The educated consumer of national PPD data needs to understand distinctions between data on claim type and data on benefit type. Benefits in workers' compensation are often viewed in a hierarchy based on the severity of the injury: in ascending order, Medical, TTD, PPD, PTD, and Fatal. Claims are often classified according to the highest level of benefits received; this is referred to as a claim type classification because the whole claim is being classified. The same labels (TTD, PPD, etc.) may apply to only the specific benefit received. The benefits themselves may be referred to in isolation; this is referred to as a benefit type classification. A single *claim type* may receive several different *benefit types*. Thus, both the following might be accurate statements about a particular group of claims:

- the average PPD claim received $30,000 in benefits (PPD is the claim type), and
- the average claim received $10,000 in PPD benefits (PPD is the benefit type).

Degrees

Oregon PPD benefits are paid based on a formula which gives a dollar amount per degree of disability. For unscheduled PPD, all injuries have a maximum of 320 degrees, or 100 percent disability of the whole person. For scheduled disabilities, the maximum varies by the body part injured. For example, loss of a leg is worth 150 degrees of scheduled disability, while loss of an arm is worth 192 degrees. Injuries are rated in percentages of these figures: a 30 percent disability of the leg would be 30 percent of 150 degrees, or 45 degrees of scheduled disability. A 30 percent disability of the back would be 30 percent of 320 degrees, or 96 degrees of unscheduled disability. The degree value is converted to a dollar award through a benefit formula which varies for scheduled and unscheduled disability.

Table 2. Oregon Permanent Partial Disability (PPD) benefit chronology 1981-2000

Effective date	Legislation/ decision	Effect	Maximum $ award Scheduled (arm)	Maximum $ award Unscheduled
11/1/81	1981 HB 2600	Scheduled and unscheduled PPD are both set at $100 per degree.	$19,200	$32,000
9/20/85	1985 HB 2138	Scheduled PPD raised to $125 per degree. No change for unscheduled.	$24,000	$32,000
1/1/88	1987 HB 2900	Scheduled PPD raised to $145 per degree. No change for unscheduled. Insurer rating of PPD is permitted when the worker has returned to work.	$27,840	$32,000
1/1/88	1987 HB 2900	ORS 656.215 is added, which gives the Director authority to increase unscheduled PPD for more seriously disabled workers, if savings result from the implementation of rating standards.	$27,840	$32,000
7/1/88	1987 HB 2900	Standards for evaluation of PPD are implemented, for use at all levels of decision. Exception for "clear and convincing evidence" on appeal. Unscheduled PPD standards use the criteria of impairment modified by age, education, and adaptability.	$27,840	$32,000
5/7/90	1990 SB 1197	Scheduled PPD increased to $305 per degree. No change for unscheduled.	$58,560	$32,000
7/1/90	1990 SB 1197	Mandatory reconsideration process prior to hearing. Medical arbiter exam process for impairment disputes. "Clear and convincing evidence" exception repealed. Director may adopt emergency rule to rate impairments not covered.	$58,560	$32,000
1/1/92	1991 SB 732	PPD benefit formula is tied to the Statewide Average Weekly Wage and adjusted annually. Unscheduled PPD is changed to a "3-tier" formula, which pays a higher rate to more seriously disabled workers. Adjusted benefit formula sunsets 12/31/95.	$58,577	$60,503
7/1/92	Annual adjustment	PPD rates rise with Statewide Average Weekly Wage change (+3.45%)	$60,601	$62,592
3/25/93	Supreme Court case	The Oregon Supreme Court issues the *England* decision, invalidating former unscheduled PPD rating rules which gave no values for age, education, and adaptability when the worker returned to regular work. Existing rules were modified to award values for these factors in all unscheduled cases.	$60,601 (due to annual adjustment)	$62,592 (due to annual adjustment)
7/1/93	Annual adjustment	PPD rates rise with Statewide Average Weekly Wage change (capped at +5%)	$63,631	$65,723
7/1/94	Annual adjustment	PPD rates rise with Statewide Average Weekly Wage change (+4.86%)	$66,722	$68,915
6/7/95	1995 SB 369	PPD benefit levels for pre-1992 injuries are inadvertently increased to 1995 levels through a drafting error.	$66,722	$68,915
6/7/95	1995 SB 369	Impairment is the only factor to be considered in rating unscheduled PPD when the worker has returned to regular work. Rating rules are adopted with this change.	$66,722	$68,915
7/1/95	Annual adjustment	PPD rates rise with Statewide Average Weekly Wage change (+1.0%)	$67,402	$69,617

Table 2. Oregon Permanent Partial Disability (PPD) benefit chronology 1981-2000 (cont.)

Effective date	Legislation/ decision	Effect	Maximum $ award Scheduled (arm)	Maximum $ award Unscheduled
1/1/96	1995 SB 369	Benefit formula is based on fixed dollar amounts, no longer linked to the Statewide Average Weekly Wage. Dollar values per degree are raised substantially. Starting points for unscheduled benefit tiers are revised (upper tiers start at lower levels of disability). Benefit revisions sunset on 12/31/99.	$80,640	$130,400
1/1/98	1997 HB 2549	Scheduled and unscheduled benefit levels are increased by 8 and 6 percent respectively.	$87,168	$138,224
1/1/2000	1999 SB 460	Scheduled and unscheduled benefit levels are increased by 12.6 and 7.8 percent respectively. Benefit revisions sunset on 12/31/2004. A drafting error reverses dollar values for second-tier unscheduled degrees.	$98,168	$149,033

Table 3. PPD Benefit Level Index (BLI) computation for 1999 benefit levels

Note: States without specified maximums were excluded from computations

State	Average weekly wage (1998)	1999 maximum PPD		Weeks of wages		Rank (weeks of wages)		Benefit Level Index	
		Scheduled (arm)	Unscheduled	Sched.	Unsch.	Sched.	Unsch.	Sched.	Unsch.
Alabama	$519.90	$ 48,840	$66,000	93.9	126.9	40	34	0.57	0.44
Alaska	$650.75		$135,000		207.5		29		0.72
Arizona	$563.79	$ 84,006		149.0		28		0.91	
Arkansas	$469.65	$ 59,010	$126,450	125.6	269.2	31	20	0.77	0.94
California	$679.79								
Colorado	$620.12	$ 59,379	$57,096	95.8	92.1	38	35	0.59	0.32
Connecticut	$786.83	$195,936	$326,560	249.0	415.0	9	8	1.52	1.44
Delaware	$653.19	$102,777	$123,333	157.3	188.8	25	31	0.96	0.66
District of Columbia	$937.06	$260,463		278.0		8		1.70	
Florida	$541.21		$190,008		351.1		12		1.22
Georgia	$593.71	$ 73,125		123.2		32		0.75	
Hawaii	$558.25	$161,928	$160,890	290.1	288.2	6	17	1.77	1.00
Idaho	$478.19	$ 75,240	$125,400	157.3	262.2	26	21	0.96	0.91
Illinois	$667.38	$258,840		387.8		3		2.37	
Indiana	$559.75	$ 53,500		95.6		39		0.58	
Iowa	$500.67	$218,000	$436,000	435.4	870.8	1	1	2.66	3.03
Kansas	$516.19	$ 82,350		159.5		23		0.98	
Kentucky	$513.25		$155,550		303.1		16		1.05
Louisiana	$517.40	$ 73,400	$190,840	141.9	368.8	29	11	0.87	1.28
Maine	$497.60	$118,629	$114,660	238.4	230.4	11	25	1.46	0.80
Maryland	$640.50	$180,800		282.3		7		1.73	
Massachusetts	$726.67	$ 30,096	$136,482	41.4	187.8	42	32	0.25	0.65
Michigan	$664.27	$156,020		234.9		13		1.44	
Minnesota	$616.79								
Mississippi	$458.12	$ 58,572	$131,787	127.9	287.7	30	18	0.78	1.00
Missouri	$555.90	$ 68,377	$117,892	123.0	212.1	33	28	0.75	0.74
Montana	$435.46		$71,925		165.2		33		0.57
Nebraska	$491.06	$105,300	$140,400	214.4	285.9	15	19	1.31	0.99
Nevada	$580.79								
New Hampshire	$595.06	$176,400	$220,080	296.4	369.8	5	10	1.81	1.29
New Jersey	$753.58	$130,680	$323,400	173.4	429.2	20	7	1.06	1.49
New Mexico	$494.54	$ 78,410	$274,435	158.6	554.9	24	2	0.97	1.93
New York	$782.27	$124,800		159.5		22		0.98	
North Carolina	$540.52	$134,400	$168,000	248.6	310.8	10	15	1.52	1.08
North Dakota	$442.12	$104,250	$208,500	235.8	471.6	12	4	1.44	1.64
Ohio	$584.52	$127,575		218.3		14		1.33	
Oklahoma	$483.12	$ 53,250	$106,500	110.2	220.4	36	26	0.67	0.77
Oregon	**$568.12**	**$ 87,168**	**$138,224**	**153.4**	**243.3**	**27**	**23**	**0.94**	**0.85**
Pennsylvania	$607.35	$241,080	$294,000	396.9	484.1	2	3	2.43	1.68
Rhode Island	$579.77	$ 28,080		48.4		41		0.30	
South Carolina	$502.90	$106,363	$164,380	211.5	326.9	16	14	1.29	1.14
South Dakota	$437.58	$ 84,600		193.3		17		1.18	
Tennessee	$547.25	$103,000	$206,000	188.2	376.4	18	9	1.15	1.31
Texas	$606.00	$ 73,200	$146,766	120.8	242.2	34	24	0.74	0.84
Utah	$516.71	$ 60,775	$101,400	117.6	196.2	35	30	0.72	0.68
Vermont	$511.83	$156,305	$239,910	305.4	468.7	4	5	1.87	1.63
Virginia	$603.54	$106,800	$267,000	177.0	442.4	19	6	1.08	1.54
Washington	$636.08		$135,464		213.0		27		0.74
West Virginia	$485.94		$124,356		255.9		22		0.89
Wisconsin	$548.88	$ 92,000	$184,000	167.6	335.2	21	13	1.02	1.17
Wyoming	$475.90	$ 46,500		97.7		37		0.60	
MEDIANS:	$558.25	$ 97,389	$146,766	163.6	287.7	21.5	18.0	1.00	1.00

Note: average annual wage was unavailable for NJ, and was estimated using WC benefit wage change data (+4.46%).

Benefit Level Index computation:

1. Array maximum PPD benefit amounts by state, as published by US Department of Labor.
2. Array annual average weekly covered wages by state, as published by Bureau of Labor Statistics (ES-202 data).
3. Develop "weeks of benefits" represented by maximum PPD / average weekly wage
4. Compute "weeks of benefits" median value for all states represented.
5. Compute BLI: state "weeks of benefits" / median weeks (median = 1.00).

Table 4. Comparison of states' PPD benefits for various wage and disability levels, as of 1/1/99

States	Hourly wage	Weekly wage	Unscheduled disability rating					Scheduled disability
			10%	20%	40%	60%	100%	100% (arm at shoulder)
Oregon	$7	$280	$4,410	$8,819	$24,422	$53,424	$138,224	$87,168
	$14	$560	$4,410	$8,819	$24,422	$53,424	$138,224	$87,168
	$20	$800	$4,410	$8,819	$24,422	$53,424	$138,224	$87,168
Utah	$7	$280	$5,827	$11,654	$23,308	$34,961	$58,269	$34,908
	$14	$560	$10,140	$20,280	$40,560	$60,840	$101,400	$60,775
	$20	$800	$10,140	$20,280	$40,560	$60,840	$101,400	$60,775
North Carolina	$7	$280	$5,603	$11,206	$22,411	$33,617	$56,028	$44,802
	$14	$560	$11,206	$22,411	$44,822	$67,234	$112,056	$89,604
	$20	$800	$16,008	$32,016	$64,032	$96,048	$160,080	$128,006