

Permanent Partial Disability Benefits

By

Edward M. Welch

welche@msu.edu

Professor and Director Workers' Compensation Center

www.lir.msu.edu/wcc

School of Labor and Industrial Relations

Michigan State University

© 2008, Michigan State University

Introduction

The Workers' Compensation Center at Michigan State University offers a course for Certified Workers' Compensation Professionals (CWCPs).¹ Because there is so much diversity among state laws, we do not attempt to teach the law of any individual state but rather teach the general principles of workers' compensation laws. Our students, however, repeatedly tell us that we could improve the course by providing more state specific information.

Recently we decided that we should see what we could do to meet this challenge. Perhaps foolishly, we decided that we would begin by looking at *permanent partial disability*. We say “foolishly” because this is an area in which there are great differences among the states. There are probably no two states that measure and compensate permanent partial disability in exactly the same way.

This article will provide a summary of what we found when reviewing permanent partial disability in the 51 U.S. jurisdictions. We have also posted on our web site a table listing the attributes of a PPD system that are used in each state and a description of the shape of permanent partial disability in each state.

<http://www.lir.msu.edu/wcc/PPD/PPD.htm>.

Other Evaluations

We are not the first nor will we be the last to examine this topic. The foundational work in this area is *Permanent Disability Benefits in Workers' Compensation* by Berkowitz and

¹ Information is available at <http://www.lir.msu.edu/wcc/>.

Burton. Barth and Niss published an extensive review of the topic in *Permanent Partial Disability Benefits: Interstate Differences*. Burton has published a more recent review of the topic in “Permanent Partial Disability Benefits”, a chapter in *Workplace Injuries and Diseases: Prevention and Compensation*.

Until recently the U.S. Department of Labor published a listing that summarized the quantitative aspects of this topic. As this is being written the Workers' Compensation Research Institute and the International Association of Industrial Accident Boards and Commissions are working with Ann Clayton to continue that publication. The California Commission on Health and Safety and Workers' Compensation is currently working on a survey of PPD benefits, <http://www.dir.ca.gov/CHSWC/chswc.html>.

Sources

The information presented here was compiled by examining state laws and publications available on the web sites for state workers' compensation agencies. Links to these web sites are available at <http://www.lir.msu.edu/wcc>.

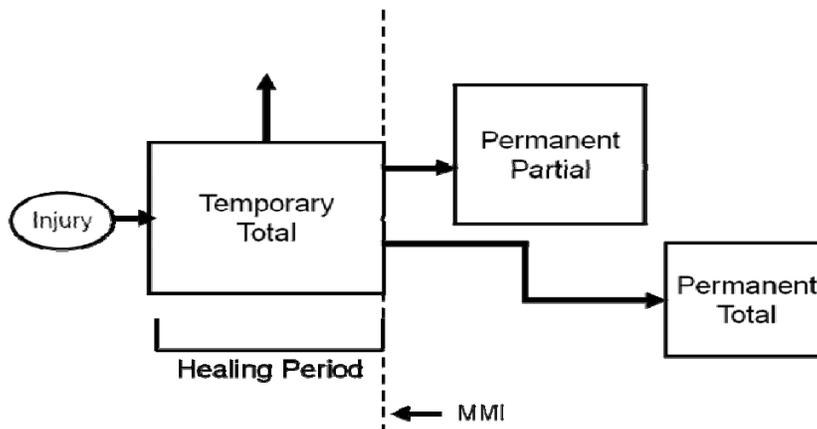
After compiling this data we posted a draft of our findings and invited the graduates of our CWCP course to review their states and offer comments. Many responded and that information has been incorporated into this article.

Limitations

This review does not attempt to describe all aspects of permanent partial disability compensation in each state. Rather we have focused on the nature of the approach that is used. We have looked at the “shape” of PPD in each state. Claims managers and others should obtain a more detailed analysis of the law in each state when making judgments about the rights of individual workers.

We have done everything we can to present an accurate and up-to-date analysis of this topic but it is certainly not perfect and things do change. If you look at your state and believe that we have not gotten it right, please let us know. Your suggestions and comments can be sent to Ed Welch at welche@msu.edu.

Overview of Disability Benefits



Most workers' compensation claims begin with the payment of *temporary total disability* benefits. These benefits are paid during a *healing period* or the worker reaches *Maximum Medical Improvement* (MMI). After the end of that time we ask whether the worker has any residual disability. A few workers are so severely injured that they will never return to work. These workers receive *permanent total disability* benefits.

A significant number of other workers have some permanent residual disability but are not totally disabled. They receive *permanent partial disability* benefits. Those claims are the focus of this article.

Alternative Approaches

Introduction

The Problem Area

Workers who have reached MMI and who have some continuing disability but who are not totally disabled are considered to have a permanent partial disability.

These are not the most frequent claims nor are they the most costly. But they are frequent enough and costly enough that they account for more workers' compensation dollars than any other type of claim. They are also the most difficult claims to manage and the claims that are most likely to result in litigation.

Alternative Approaches

Permanent partial disability is also an area in which there is great variation among the states. In the following sections, we look at some of the alternatives that are commonly used. In doing this we will look at examples from a number of states.

All States

On our web site at www.lir.msu.edu/wcc there is a discussion of how all 50 states and the District of Columbia compensate permanent partial disability.

Impairment Approach

The most common form of compensation for permanent partial disability begins with an assessment of the individual's impairment.

Some Elements of the Impairment Approach

In this section we will discuss various aspects of an impairment approach including:

- Schedules
- Impairment Rating
- Guides
- Pre-injury Wages
- Vocational Factors – Loss of Wage-earning Capacity

- Return to Work

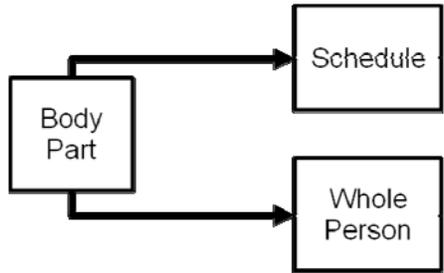
Schedules

Virtually all states have a list that indicates in some way the compensation which should be paid for injuries to certain body parts or members. Most commonly it is a list that shows the number of weeks of compensation payable for the loss of specified body parts. In some states, however, the amount of compensation is expressed as a percentage or number of points or some other measure. The schedule for Delaware shown below is typical.

Delaware	
Hand	220 Weeks
Arm	250 Weeks
Foot	160 Weeks
Leg	250 Weeks
Thumb	75 Weeks
First finger	50 Weeks
Second finger	40 Weeks
Third finger	30 Weeks
Fourth finger	20 Weeks
Great toe	40 Weeks
Other toes	15 Weeks
Eye	200 Weeks

Unscheduled Losses

In most states the list or schedule does not cover all body parts. Typically injuries to the back, the trunk, and internal organs are “unscheduled.” For these injuries states assign a value to what is called a “whole person.”



	Injury	Rating	Value	Duration	Rate
Mr. A	Hand	30%	220 Weeks	66 Weeks	2/3 AWW
Mr. B	Back (Whole Person)	20%	400 Weeks	80 Weeks	2/3 AWW

Assume Mr. A suffered an injury to his hand that resulted in a 30 percent impairment of the hand. A hand is valued at 220 weeks. He would receive benefits for 30 percent of that time or 66 weeks. Assume Mr. B suffered an injury to his back. Backs are not included in on the schedule; accordingly, they are evaluated on the basis of a whole person. A rating equal to 20 percent of the whole person results in benefits for 80 weeks. In both cases benefits are paid at the rate of two thirds of the individual’s average weekly wage.

States vary in the extent to which scheduled and unscheduled injuries are treated differently. In some states it is merely a different value that is assigned to unscheduled injuries. While in others unscheduled injuries are treated in an entirely different way.

Schedule, No Schedule

States with No Distinction Based on a Schedule	
Alaska	Nevada
California	North Carolina
Connecticut	Oregon
Florida	South Carolina
Kentucky	Texas
Minnesota	Vermont
Montana	Wyoming

Fourteen states do not distinguish between scheduled and unscheduled injuries. That is not to say they do not have a schedule. In Florida they might be inclined to say that they have a schedule that covers all disabilities. In Kentucky they would say that they do not have a schedule, but one could argue that the AMA Guides that they use are in some sense a form of a schedule.

Distinction Based on Schedule			
Number of Weeks Only		Other Distinction	
Delaware	Nebraska	Alabama	Mississippi
Georgia	New Jersey	Arizona	New Hampshire
Hawaii	North Dakota	Arkansas	New Mexico
Idaho	Ohio	Colorado	New York
Illinois	Oklahoma	Dist. of Col.	Pennsylvania
Indiana	South Dakota	Kansas	Rhode Island
Iowa	Tennessee	Louisiana	Virginia
Maryland	Utah	Maine	Washington
Missouri	West Virginia	Massachusetts	Wisconsin
		Michigan	

All the other states distinguish in some way between disabilities that are listed on a schedule and those that are not. In 18 states the distinction is simply that a “whole person” value is assigned to unscheduled disabilities while a schedule lists the value of other disabilities. In 19 other states there are more significant differences in the treatment of the two groups of claims.

There are also variations in how extensive the schedules are. Some states include only the extremities and eyes. Others include more body parts.

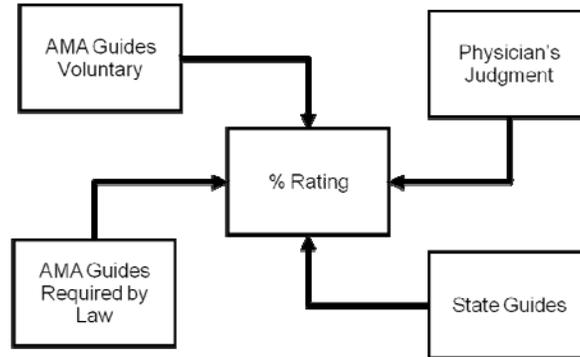
Some states only pay according to the schedule for an anatomical loss. While others pay for an impairment of a scheduled body part.

Partial Impairment Rating

If a worker suffers an amputation or a total loss of a listed body part, he or she receives the benefits listed in the schedule. Most injuries, however, do not result in the total loss of

a body part but rather in an impairment. In these cases we ask a physician to give an "impairment rating" that is usually expressed as a percentage.

Guides



How do doctors determine the extent of an individual's impairment? The American Medical Association publishes a *Guide to the Evaluation of Permanent Disability*.

AMA Guides

AMA Guides Required for:			
All Impairment Rating			Some Impairment Rating
Alaska	Kentucky	Rhode Island	
Arizona	Louisiana	South Dakota	
Arkansas	Maine	Tennessee	
California	Maryland	Texas	
Colorado	Montana	Vermont	
Dist. of Col.	Nevada	Wyoming	
Georgia	New Hampshire		
Kansas	Pennsylvania		
			New Mexico
			North Dakota
			Massachusetts
			Oklahoma
			Washington
			West Virginia

Twenty two states mandate the application of the AMA Guides in all claims involving impairment rating. Six states require their use in some claims. They are used on a voluntary basis in several other states. As this is being written there is a dispute in South Carolina as to whether they are mandatory.

A few states publish their own guides. There are a number of states that do not provide any guidance to physicians about how they should do this. Even in those states, however, customs arise that are generally followed.

Pre-injury Wages

Pre-injury Wages	
Are not considered in any claims	Are a factor in some but not all claims
Alaska Hawaii Indiana Minnesota North Dakota Washington	Colorado Massachusetts Ohio Oregon Wyoming

In most states the worker’s pre-injury wages are an important factor in determining the amount of benefits. This is usually referred to as the worker’s “average weekly wage.” However in six states they play no role at all. The lost arm of a high-paid executive is worth the same amount as the lost arm of a clerk. The lost finger of a concert pianist is worth the same as the lost finger of an opera singer. Five other states apply this principle to some but not all claims for PPD.

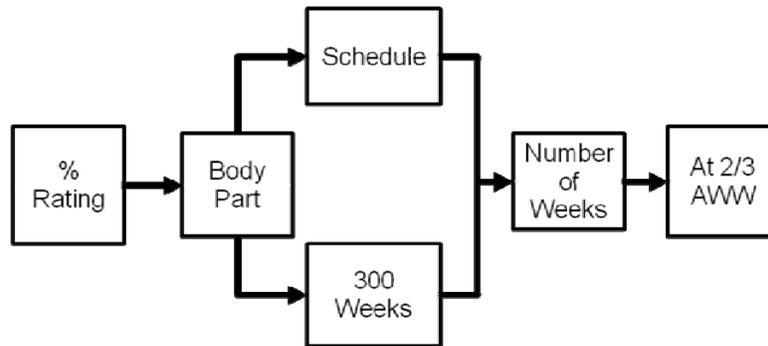
Alaska



Alaska is an example of a state that does not consider pre-injury wages in compensating permanent partial disability.

Simplest Common Approach

Delaware



It is much more common to consider the pre-injury wage rate. Delaware is an example of a state that uses the simplest, most common approach. A physician gives an estimate of the extent of the impairment to a specific body part or to the whole person. A schedule lists the number of weeks for various body parts and a whole person is valued at 300 weeks. The impairment rating is multiplied by the listed number of weeks to give the duration of the benefits. The rate of benefits is two thirds of the worker’s average weekly

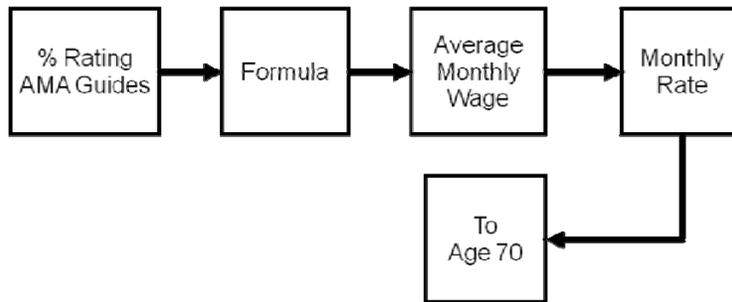
wage. (As with all other workers' compensation benefits, in every state this is limited by a maximum rate and in many states by a minimum rate.)

Duration v Rate

Rating Affects Weekly Rate	
All Claims	Some Claims
Kentucky Nevada New Jersey	Alabama New Mexico

In most states the impairment rating affects the duration of PPD benefits but in five states the duration is fixed and the amount of weekly benefits varies depending on the rating. In these states all claimants get benefits for the same length of time.

Nevada



In Nevada for example all workers with a permanent partial disability receive benefits to age 70 but the weekly rate is adjusted based on the extent of the impairment.

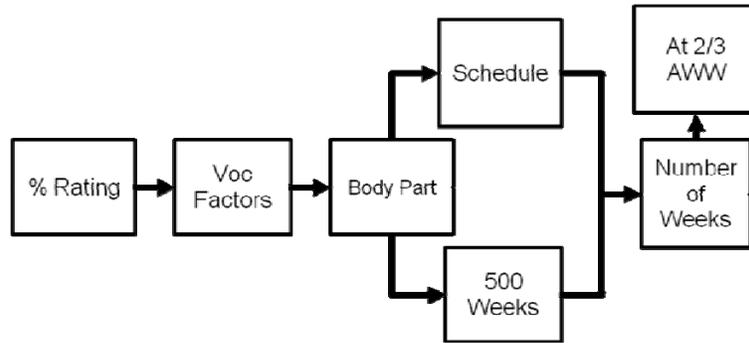
Vocational Factors – Loss of Wage-earning Capacity

Assume Ms. A and Ms. B suffer exactly the same injury to their backs. Assume further that Ms. A works as a heavy laborer and Ms. B works as a human resource manager. It is likely that Ms. A will suffer a much larger wage loss than Ms. B. Under the schemes described above, however, they will receive exactly the same benefits. Some people suggest this is unfair.

Vocational Factors Considered		
All Ratings	Ratings of Some Claims	
California	Arkansas	Montana
		New Mexico
Idaho	Colorado	Oregon
Illinois	Iowa	Wisconsin
Kentucky	Kansas	Wyoming
South Carolina	Maryland	
Tennessee		

Accordingly, vocational factors such as age, education and work experience are used in determining a disability rating in all claims in six states and some claims in ten states.

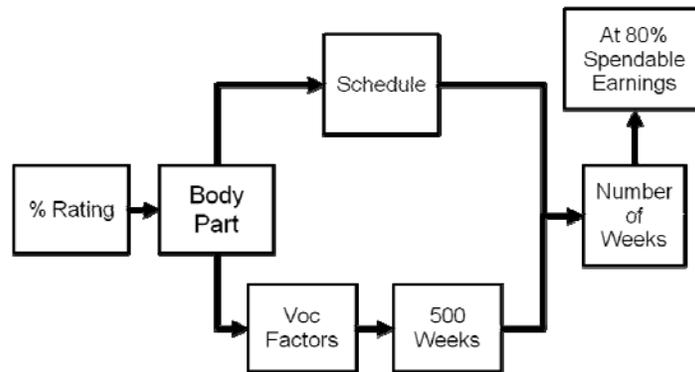
Idaho



Thus the scheme in Idaho is very similar to the scheme in Delaware seen above except that the impairment rating is modified by vocational factors.

Some commentators distinguish this approach from an impairment approach and describe it as an approach based upon the *loss of wage-earning capacity*.

Iowa

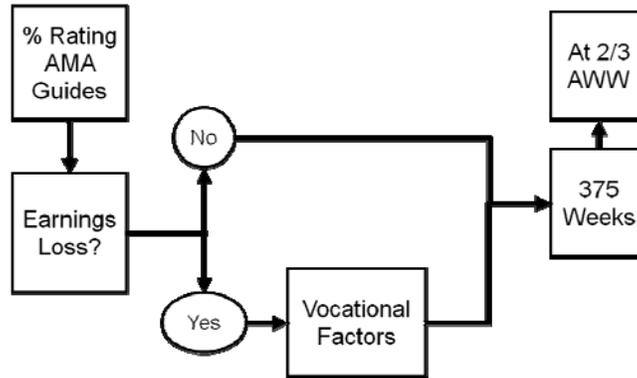


Some states consider vocational factors only in certain cases. In Iowa for example they are considered when rating losses to a whole person but not when rating scheduled losses.

Return to Work in Impairment Evaluation

As will be discussed below, some states base permanent disability benefits primarily on the worker's actual *wage loss*. In addition there are a number of the states that use an impairment approach but alter the calculation based on factors related to a return to work.

Montana



For example Montana uses a pure impairment approach if the individual has returned to work with no loss of earning. If the worker continues to have an earnings loss, however, the rating is increased by vocational factors.

There are a couple of reasons for this approach. One is that workers require less compensation if they are back on the job. Another is to create any incentive for employers to take injured individuals back to work.

The triggering factors vary across the states but include:

- Return to work
- Being able to return to work
- An offer of a return to work

Return to Work

Return to Work Affects Disability Rating	
All Claims	Some Claims
Florida Montana New Mexico Tennessee	Arkansas Wisconsin

Six states alter the formula based on whether the individual has returned to work. In four states this applies to all claims. In two states it applies to just some categories of claims.

Able to Return to Work

Ability to Return to Work Affects Disability Rating	
Some Claims	All Claims
Kansas Kentucky Oregon Wyoming	Arizona

Five states alter the calculation when a worker is found able to return to work. (These states also alter it when the worker has returned to work.)

Offer of Work

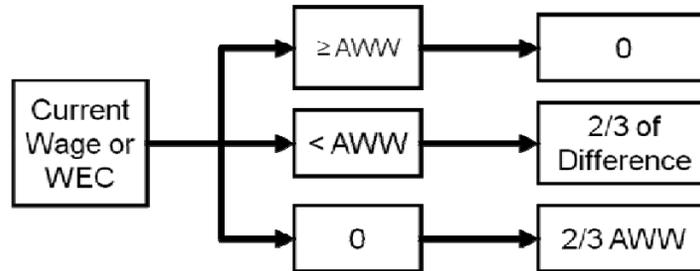
Offer of Return to Work Affects Disability Rating	
Some Claims	All Claims
West Virginia	Arkansas California

In three states the formula is altered if there is an offer of work that the individual can perform.

Wage-loss Approach

Wage-loss Benefits		
Arizona	Massachusetts	Ohio
Connecticut	Michigan	Pennsylvania
Dist. of Col.	Mississippi	Rhode Island
Illinois	New Hampshire	Texas
Louisiana	New York	Virginia
Maine	North Carolina	

In 17 states benefits in some claims are based on the worker's actual wage loss.



If the worker returns to work at wages that are equal to or greater than the average weekly wage, no benefits are payable. If the worker has no subsequent wages, he or she receives two-thirds of the average weekly wage subject to a maximum limitation. If the worker returns to a lower-paying position, the worker receives two-thirds of the difference.

In most states with a wage-loss approach benefits are reduced not only for wages actually earned but also for the individual's *wage-earning capacity*. Thus if Mr. D is not earning any wages but the employer can establish that there are many jobs available which he could perform that pay \$300 per week, Mr. D will be treated as if he were earning \$300 per week.

	AWW	Current Wage	Wage-Earning Capacity	Difference	Benefit
Ms. A	\$600	0	0	\$600	\$400
Mr. B	\$600	\$600	\$600	0	0
Ms. C	\$600	\$300	\$300	\$300	\$200
Mr. D	\$600	0	\$300	\$300	\$200

Assume a state pays benefits at two-thirds of the average weekly wage subject to the maximum of \$500 per week.

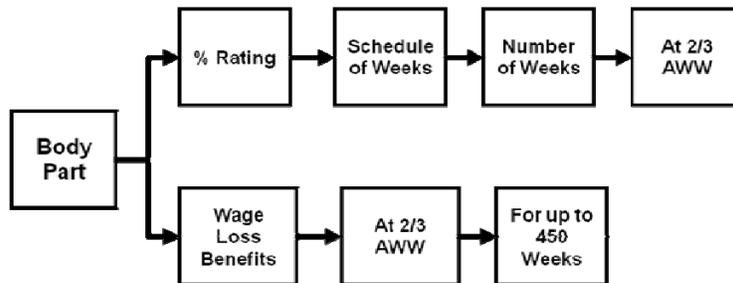
- Ms. A had an average weekly wage of \$600, has not returned to work, and has no wage-earning capacity at this point in time. She will receive \$400 per week.
- Mr. B has returned to work at \$600 per week and will receive no benefits.
- Ms. C has returned to work at \$300 per week. Assume this is also her wage-earning capacity. She will receive benefits equal to two-thirds of the difference between her current wages and her average weekly wage, in this case \$200 $((600-300) \times 2/3 = 200)$.
- Mr. D has not returned to work but the evidence indicates there are jobs that he could perform and that are available to him that would pay \$300 per week. Since he has a wage-earning capacity of \$300 per week he is compensated as if he were earning that amount. Some states say he is “deemed” to have wages of \$300 per week.

Schedules in a Wage-loss System

All states that pay wage-loss benefits also pay some benefits according to a schedule. Frequently in wage-loss states the schedule only applies if there is an amputation or complete loss of the body part and does not apply to partial losses.

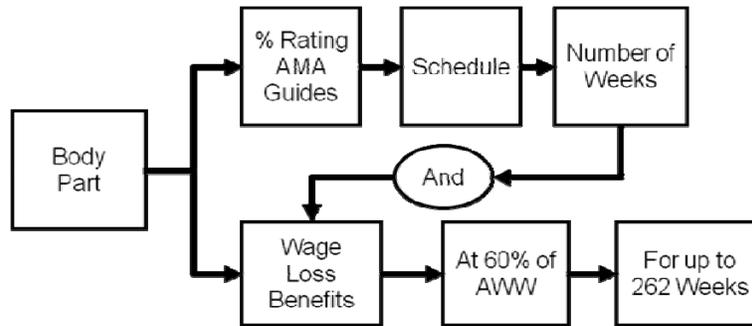
States differ in how they combine the two types of benefits.

Mississippi



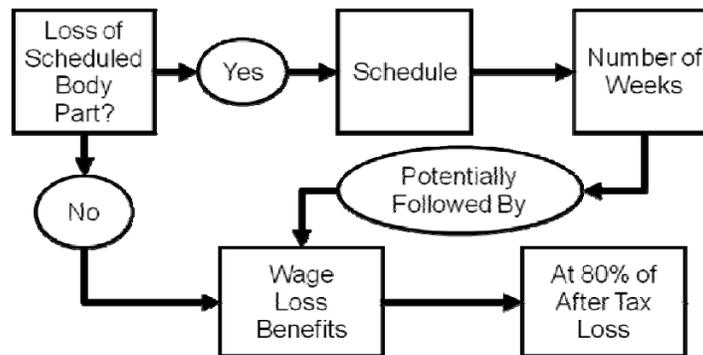
In Mississippi a worker receives either a scheduled impairment benefit or wage loss benefits depending upon the body part injured.

New Hampshire



In New Hampshire a worker with a loss to a scheduled body part and a wage loss will receive both impairment and wage-loss benefits.

Michigan



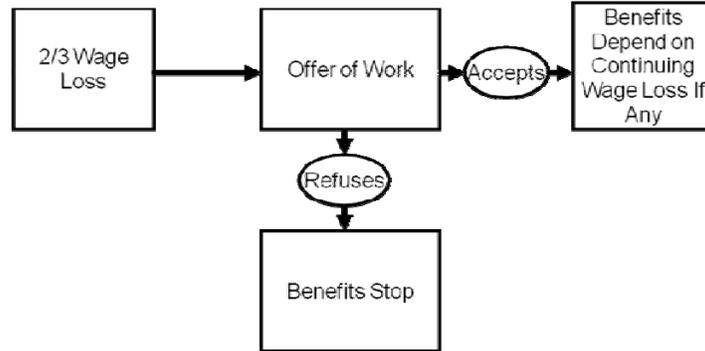
In Michigan most workers receive wage-loss benefits. A worker with an amputation receives scheduled benefits for a proscribed period of time. This is followed by wage-loss benefits if the worker still has a wage loss.

Limits on Duration

Limit on Duration of Wage-loss Benefits			
Arizona		Massachusetts	520
Connecticut	520	Michigan	
Dist. of Col.	500	Mississippi	450
Illinois		New Hampshire	262
Louisiana	520	New York	525
Maine	212	North Carolina	300
		Ohio	200
		Pennsylvania	500
		Rhode Island	321
		Texas	401
		Virginia	312

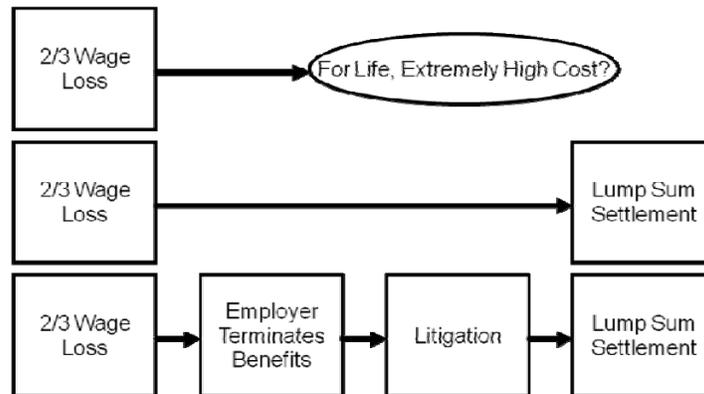
As shown in the table above most states put a limit on the number of weeks of wage-loss benefits. Note that in many states there are exceptions and adjustments to these limits for various reasons.

Refusal of Offer of Employment



An important aspect of the wage-loss approach is a provision that the worker will lose benefits if he or she refuses a reasonable offer of work that is within his or her restrictions. This creates an incentive for the employer to offer work and for the worker to accept it.

Practicalities of the Wage-Loss Approach



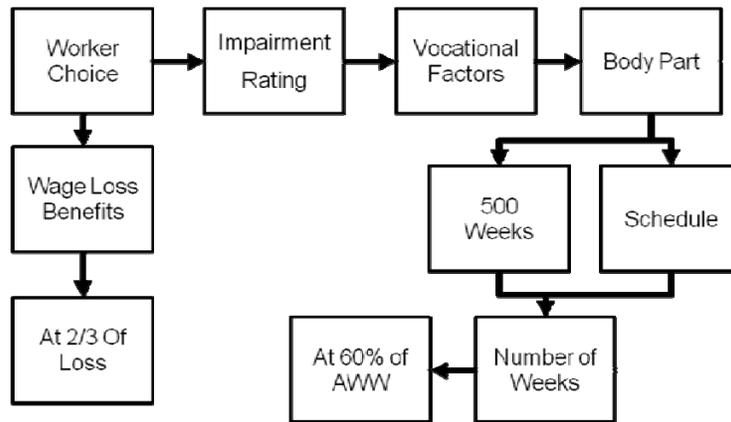
Claims people unfamiliar with the wage-loss approach look at the possibility that the worker could receive benefits for many years or for life and assume it is a very costly system. In fact it is ordinarily no more costly than other systems. This is because most claims are terminated with a lump sum settlement. In most of these states the employer has the power to terminate benefits if it believes the worker no longer qualifies. This results in litigation which is often time-consuming and costly and the worker frequently chooses to accept a lump sum settlement. These lump sum payments frequently look very much like the permanent partial benefits paid in other states.

Worker Choice

Worker Choice
Illinois
Louisiana
North Carolina

In three states the worker is offered a choice of how he or she would like to have PPD compensated. In Illinois and North Carolina the worker can choose between impairment benefits and a form of wage-loss benefits. In Louisiana this is limited to workers who have an injury to a scheduled body part and a reduced earning capacity.

Illinois

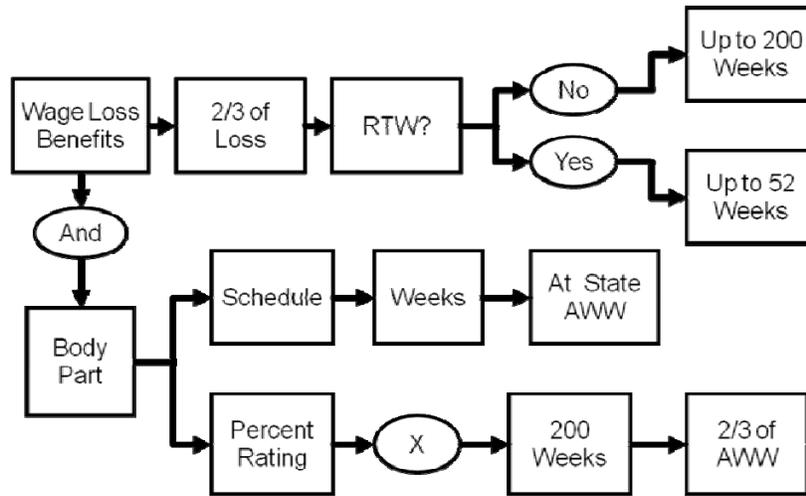


In Illinois workers may choose between wage-loss benefits and benefits based on an impairment rating which includes consideration of age, skill, occupation, and other factors. Benefits based on impairment are chosen much more often than the wage-loss benefits.

Examples

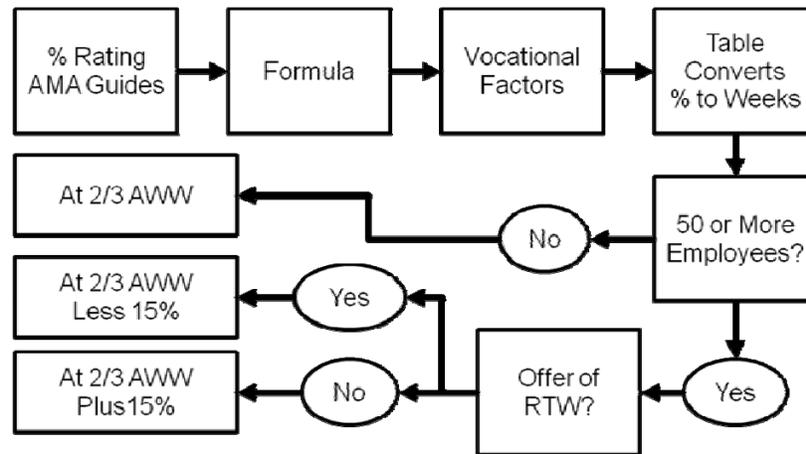
A few more examples will illustrate how some states combine the various approaches discussed above.

Ohio



In Ohio an individual can receive wage-loss benefits for up to 200 weeks if he or she has returned to work at lower wages. Wage-loss benefits are payable to a worker who has not returned to work for up to 52 weeks. In some circumstances it is possible to combine these and receive benefits for up to 226 weeks. In addition workers can receive benefits based on an impairment. Scheduled losses are paid at the state average weekly wage regardless of the worker’s earnings. Unscheduled losses are paid as a percentage of 200 weeks at two-thirds of the worker’s average weekly wage with a relative low maximum of 1/3 of the state average weekly wage.

California

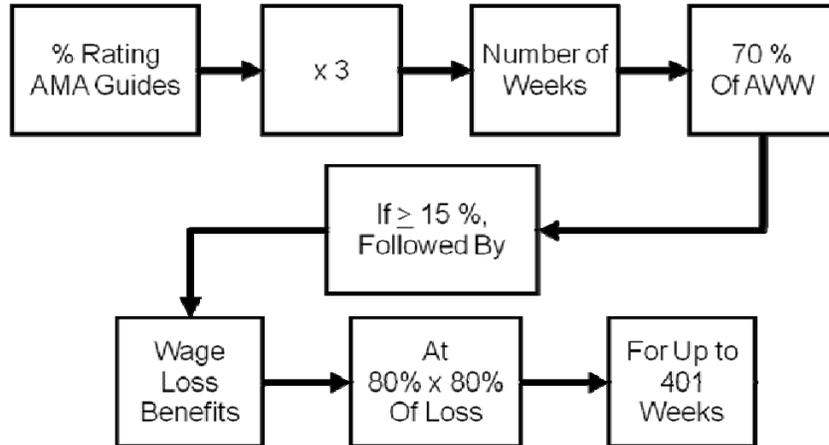


In California the process begins with an evaluation under the AMA Guides. This is then adjusted based on an estimate of *diminished future-earning capacity*. It is adjusted further based on vocational factors which yields a percentage rating. A table then converts the percentage to a number of weeks.

If the employer had fewer than 50 workers, benefits are paid at two-thirds of the average weekly wage. If the employer employed 50 or more workers, then we consider whether

or not there was an offer of return to work. If there was an offer, the worker receives 15 percent less. If there was no offer, the worker receives 15 percent more.

Texas



In Texas, workers receive an impairment rating based on the AMA Guides. They receive impairment benefits for three weeks for each percent of impairment. (A 10 percent impairment would result in benefits for 30 weeks.) Benefits are paid at 70 percent of the average weekly wage.

If the impairment rating is 15 percent or more, the worker is also entitled to wage-loss benefits. These are paid at the rate of 80 percent of the wage loss. They are payable for up to 401 weeks. There are various requirements for continuing entitlement to wage-loss benefits, including what other states might call a requirement of a “job search.”

A summary of all 51 U.S. jurisdictions can be found under PPD on our web page at: www.lir.msu.edu/wcc.

Illustrations

In order to understand the implications of the various approaches, we will look at a set of illustrations. We will look at the PPD benefits that six workers would receive in seven hypothetical states. Below we provide information about each worker and each state. In all cases assume that the worker received temporary benefits until MMI or a return to work. For these illustrations we will only look at permanent benefits or the benefits received after MMI.

Assume in each case that the worker suffered a back injury, that backs are not listed on a schedule, and that the benefit rates are all below the maximum.

We will first look at the six sample workers and then examine the benefits they would receive in each state.

Workers

	AWW	Job	Rating	Adj. Rating	RTW
Ms. A	900	Laborer	5%	10%	At MMI
Ms. B	900	Laborer	20%	30%	At MMI
Ms. C	900	Laborer	20%	30%	+ 100 wks
Mr. D	900	Laborer	20%	30%	Never
Mr. E	900	HR Mgr.	20%	20%	At MMI
Mr. F	600	HR Asst.	20%	20%	At MMI

Ms. A is a laborer with an average weekly wage of \$900.00. She suffered a back injury that resulted in an impairment rating of 5 percent. If vocational factors are considered, this would be adjusted to 10 percent. She returned to work at MMI.

Ms. B is a laborer with an average weekly wage of \$900.00. She suffered a back injury that resulted in an impairment rating of 20 percent. If vocational factors are considered, this would be adjusted to 30 percent. Because her employer had an aggressive return-to-work program she returned to work at MMI.

Ms. C is a laborer with an average weekly wage of \$900.00. She suffered a back injury that resulted in an impairment rating of 20 percent. If vocational factors are considered, this would be adjusted to 30 percent. She did not return to work until 100 weeks after MMI.

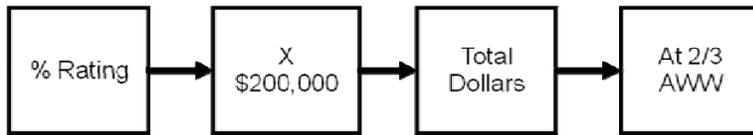
Mr. D is a laborer with an average weekly wage of \$900.00. He suffered a back injury that resulted in an impairment rating of 20 percent. If vocational factors are considered, this would be adjusted to 30 percent. He never went back to work.

Mr. E is an HR Manager with an average weekly wage of \$900.00. He suffered a back injury that resulted in an impairment rating of 20 percent. He would not receive any adjustment based on vocational factors. Because of the nature of his work he was able to go back to work after three weeks.

Mr. F is an HR Assistant with an average weekly wage of \$600.00. He suffered a back injury that resulted in an impairment rating of 20 percent. He would not receive any adjustment based on vocational factors. Because of the nature of his work he was able to go back to work after three weeks.

Results

State 1



State 1 is a pure impairment state. Benefits are based entirely on the workers impairment rating. No other factors are taken into account.

State 1	AWW	Job	Rating	Adj. Rating	RTW		% Rating	X	Total \$
Ms. A	900	Laborer	5%	10%	At MMI		5%	200,000	10,000
Ms. B	900	Laborer	20%	30%	At MMI		20%	200,000	40,000
Ms. C	900	Laborer	20%	30%	+ 100 Wks		20%	200,000	40,000
Mr. D	900	Laborer	20%	30%	Never		20%	200,000	40,000
Mr. E	900	HR Mgr.	20%	20%	At MMI		20%	200,000	40,000
Mr. F	600	HR Asst.	20%	20%	At MMI		20%	200,000	40,000

The calculation is very simple; we multiply the percent rating by a fixed amount and this gives the benefits paid. (In some states that use this approach, the benefits are paid as a lump sum. In others it is paid over a period of time.) The only thing that differentiates between awards is the degree of impairment. Because of the nature of the work that they do Mr. E and Mr. F will likely go back to work much sooner than the others. Also because he was earning less Mr. F will have a lower wage loss but they will all receive the same benefit.

State 2

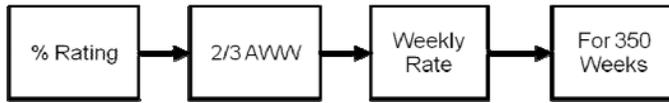


State 2 considers impairment and pre-injury wages. The rating is applied to a whole person value of 350 weeks to determine how long the worker will receive benefits. They are then paid at 2/3 of the average weekly wage subject to a maximum.

State 2	AWW	Job	Rating	Adj. Rating	RTW	% Rating	300 Wks	# Wks	2/3 AWW	Total \$
Ms. A	900	Laborer	5%	10%	At MMI	5%	350	18	600	10,500
Ms. B	900	Laborer	20%	30%	At MMI	20%	350	70	600	42,000
Ms. C	900	Laborer	20%	30%	+ 100 Wks	20%	350	70	600	42,000
Mr. D	900	Laborer	20%	30%	Never	20%	350	70	600	42,000
Mr. E	900	HR Mgr.	20%	20%	At MMI	20%	350	70	600	42,000
Mr. F	600	HR Asst.	20%	20%	At MMI	20%	350	70	400	28,000

This is a much more common approach. In addition to considering the impairment rating, we differentiate Mr. F from the others because his pre-injury wages were lower and he will have a smaller wage loss.

State 3

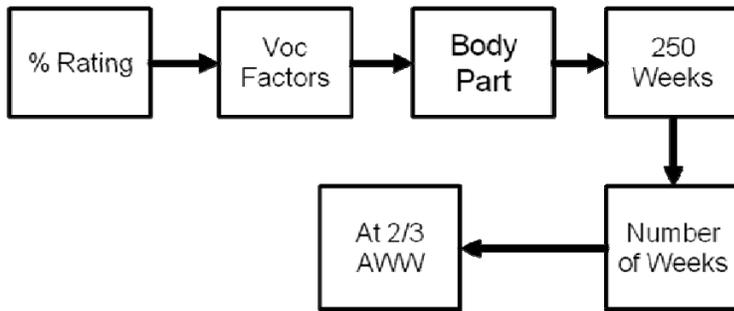


In State 3 everybody entitled to PPD benefits receives them for 350 weeks. The weekly rate is determined by multiplying the rating times 2/3 the average weekly wage.

State 3	AWW	Job	Rating	Adj. Rating	RTW	% Rating	2/3 AWW	Rate	Paid For	Total \$
Ms. A	900	Laborer	5%	10%	At MMI	5%	600	30	350	10,500
Ms. B	900	Laborer	20%	30%	At MMI	20%	600	120	350	42,000
Ms. C	900	Laborer	20%	30%	+ 100 Wks	20%	600	120	350	42,000
Mr. D	900	Laborer	20%	30%	Never	20%	600	120	350	42,000
Mr. E	900	HR Mgr.	20%	20%	At MMI	20%	600	120	350	42,000
Mr. F	600	HR Asst.	20%	20%	At MMI	20%	400	80	350	28,000

The total payments here are exactly the same as in State 2. The difference is that instead of varying the duration of benefits, we vary the rate. Thus all workers receive benefits for 350 weeks but they receive different weekly amounts.

State 4

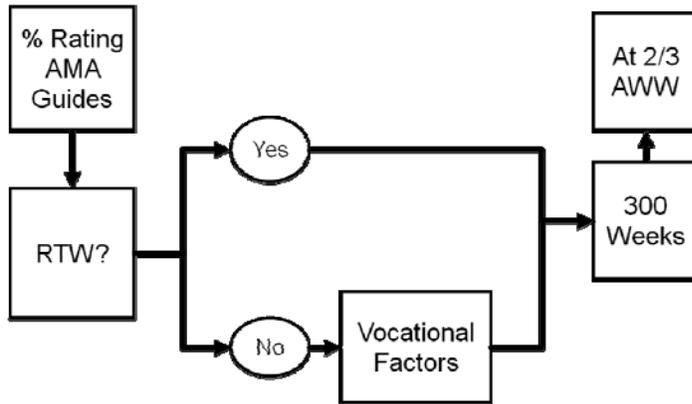


State 4 considers impairment, pre-injury wages, and vocational factors. The impairment rating is adjusted to consider things such as age, education and the kind of work performed. This is applied to a whole person value of 250 weeks to determining how long the worker will receive benefits. They are then paid at 2/3 of the average weekly wage subject to a maximum.

State 4	AWW	Job	Rating	Adj. Rating	RTW	% Rating	Adj. Rating	250 Wks	# Wks	2/3 AWW	Total \$
Ms. A	900	Laborer	5%	10%	At MMI	5%	10%	250	25	600	15,000
Ms. B	900	Laborer	20%	30%	At MMI	20%	30%	250	75	600	45,000
Ms. C	900	Laborer	20%	30%	+ 100 Wks	20%	30%	250	75	600	45,000
Mr. D	900	Laborer	20%	30%	Never	20%	30%	250	75	600	45,000
Mr. E	900	HR Mgr.	20%	20%	At MMI	20%	20%	250	50	600	30,000
Mr. F	600	HR Asst.	20%	20%	At MMI	20%	20%	250	50	400	20,000

In State 4 we adjust the rating for the laborers as compared to the rating of HR people because as a result of the nature of the work they do, they are likely to have a greater wage loss.

State 5



State 5 is like State 4 but it considers vocational factors only for individuals who have not returned to work at MMI. They are not considered if the individual has returned to work.

State 5	AWW	Job	Rating	Adj. Rating	RTW	RTW?	% Rating	Adj. Rating	300 Wks	# Wks	2/3 AWW	Total \$
Ms. A	900	Laborer	5%	10%	At MMI	Yes	5%		300	15	600	9,000
Ms. B	900	Laborer	20%	30%	At MMI	Yes	20%		300	60	600	36,000
Ms. C	900	Laborer	20%	30%	+ 100 Wks	No		30%	300	90	600	54,000
Mr. D	900	Laborer	20%	30%	Never	No		30%	300	90	600	54,000
Mr. E	900	HR Mgr.	20%	20%	At MMI	Yes	20%		300	60	600	36,000
Mr. F	600	HR Asst.	20%	20%	At MMI	Yes	20%		300	60	400	24,000

Because Ms. A and Ms. B returned to work they do not receive the vocational adjustment. Since they are back to work they have less wage loss and less need for compensation. This also creates an incentive for the employer to take them back to work. There is an incentive for them to accept an offer of work because some states deny benefits if they refuse and in all cases the wages earned will be greater than the compensation benefits lost.

State 6

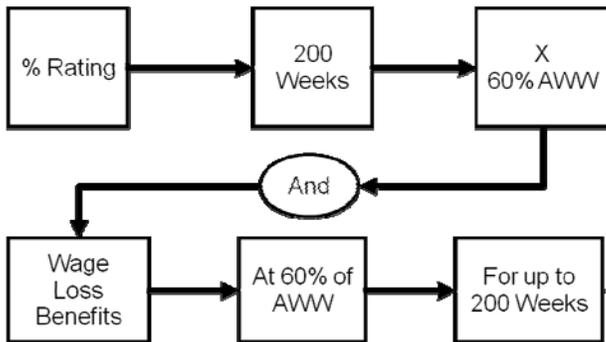


State 6 pays wage-loss benefits at 2/3 of the wage loss for up to 300 weeks. In practice claims are often disputed and settled for a compromise lump sum but we will compute them here assuming there is no settlement.

State 6	AWW	Job	Rating	Adj. Rating	RTW		2/3 AWW	Weeks Off	Max Wks	Total \$
Ms. A	900	Laborer	5%	10%	At MMI		600	0	300	0
Ms. B	900	Laborer	20%	30%	At MMI		600	0	300	0
Ms. C	900	Laborer	20%	30%	+ 100 Wks		600	100	300	60,000
Mr. D	900	Laborer	20%	30%	Never		600	>300	300	180,000
Mr. E	900	HR Mgr.	20%	20%	At MMI		600	0	300	0
Mr. F	600	HR Asst.	20%	20%	At MMI		400	0	300	0

In this wage-loss state you only get benefits if you have a wage loss. Ms. A, Ms. B, Mr. E, and Mr. F returned to work at or before MMI. They will get no further benefits. (It is argued that they do not need them because they are back to work.) Ms. C and Mr. D have at least the potential to receive very substantial benefits.

State 7



In State 7 workers receive both impairment and wage-loss benefits. Impairment benefits are based on a rating and a whole person value of 200 weeks. Wage-loss benefits are paid for up to 200 weeks. Both benefits are paid at 60 percent of the average weekly wage. In practice claims are often disputed and settled for a compromise lump sum but for the exercise calculate the amount assuming no settlement.

State 7	AWW	Job	Rating	Adj. Rating	RTW	% Rating	200 Wks	# Wks	60% AWW	Imp. Ben	60% AWW	Weeks Off	W-L Ben.	Total \$
Ms. A	900	Laborer	5%	10%	At MMI	5%	200	10	540	5,400	540	0	0	5,400
Ms. B	900	Laborer	20%	30%	At MMI	20%	200	40	540	21,600	540	0	0	21,600
Ms. C	900	Laborer	20%	30%	+ 100 Wks	20%	200	40	540	21,600	540	100	54,000	75,600
Mr. D	900	Laborer	20%	30%	Never	20%	200	40	540	21,600	540	>200	108,000	129,600
Mr. E	900	HR Mgr.	20%	20%	At MMI	20%	200	40	540	21,600	540	0	0	21,600
Mr. F	600	HR Asst.	20%	20%	At MMI	20%	200	40	360	14,400	360	0	0	14,400

In pure wage-loss states individuals who return to work quickly sometimes complain that they suffered a very serious injury but received very little in benefits. Accordingly some states pay both wage-loss and impairment benefits. It can be argued that State 7 is the most “equitable” of our example states. Each worker receives different benefits based on his or her actual situation.

Overall Results

	AWW	Job	Rating	Adj. Rating	RTW	State 1	State2	State 3	State 4	State 5	State 6	State 7
Ms. A	900	Laborer	5%	10%	At MMI	10,000	10,500	10,500	15,000	9,000	0	5,400
Ms. B	900	Laborer	20%	30%	At MMI	40,000	42,000	42,000	45,000	36,000	0	21,600
Ms. C	900	Laborer	20%	30%	+ 100 Wks	40,000	42,000	42,000	45,000	54,000	60,000	75,600
Mr. D	900	Laborer	20%	30%	Never	40,000	42,000	42,000	45,000	54,000	180,000	129,600
Mr. E	900	HR Mgr.	20%	20%	At MMI	40,000	42,000	42,000	30,000	36,000	0	21,600
Mr. F	600	HR Asst.	20%	20%	At MMI	40,000	<u>28,000</u>	28,000	20,000	24,000	0	14,400
Total						210,001	206,502	206,503	200,004	213,005	240,006	268,207

Note:

- The total cost per state is about the same regardless of the system. Of course we set it up to come out that way. The point is that how you set the values determines the overall cost more than which system you use.
- Some states did much more to recognize the individual differences among the workers but doing this required a much more complicated system. When we teach this in our classes we give these examples as a group exercise. The group that gets State 1 finishes in a few minutes but the group with State 7 takes a long time. In real life this complexity probably translates into more administrative costs and more litigation.

Some Things to Keep in Mind

There are a few things that we should keep in mind when examining these systems and especially when making comparisons among them.

Relationship to Temporary Benefits

	TTD Weeks	PPD Award	Adjustment	PPD Paid	Total Weeks
State A	20	50		50	70
State B	20	50	-20	30	50

In some states permanent partial benefits are paid in addition to temporary benefits. Thus in State A if a worker received 20 weeks of temporary total benefits and a permanent partial award of 50 weeks of benefits, he or she would receive a total of 70 weeks of benefits.

In other states the weeks of temporary total benefits are deducted from the permanent partial award. Accordingly, in State B the worker above would have the 20 weeks of temporary benefits deducted from the 50 weeks of permanent partial benefits resulting in only 30 weeks of permanent partial benefits and a total payment for only 50 weeks.

A few states use a formula and deduct only part of the period of temporary total benefits from the permanent partial award.

Variations in Whole Person Value

There are substantial variations among the states in the value set for a whole person. There is no clear explanation for this. In many cases it is simply historical. In comparing states, one must keep in mind that this is just one variable in the determination of the total amount of benefits a worker receives. One cannot assume that a state with a higher whole person value necessarily pays more in benefits. The way in which ratings are calculated and the maximum benefit level may offset a low or high value placed on a whole person.

Variation in Ratings

Ratings are not consistent across states, even among states that use the AMA guides. A worker that receives a 25 percent rating in one state will not necessarily receive the same rating in another state.

Variation in Maximum Rates

There is also considerable variation in the maximum rate of benefits paid in the various states.

Wage-loss Less Efficient

The wage-loss approach necessarily requires that cases be kept open for a long period of time and evaluated retrospectively on a continual basis. This is often thought to be a less efficient approach.

Impairment More Efficient

In an impairment or combined approach, at one point in time a prospective assessment is made of the extent of the worker's loss. This eliminates the need to keep the case open and continually re-evaluate the situation. For this reason, these systems are often considered more efficient.

Impairment as a Proxy for Wage Loss

Some states that use an impairment system have made a clear decision to base benefits strictly upon the degree of impairment. In states that use combined systems, it is not always clear what the goal is. It may be that they are using impairment as a "proxy" for wage loss. In other words, they are using impairment and other factors as a way to predict wage loss in a one-time, more efficient approach.

Impairment and Return to Work

In most impairment or combined systems, the benefits are paid even if the individual has returned to work. This can be justified in two ways. One, the payment is intended to compensate only for impairment or two, wage loss is a consideration; but for the sake of efficiency we have made a one-time judgment that we stick with regardless of subsequent events.

Wage-loss Settlements

Most states that have a wage-loss system resolve a large percentage of their claims through lump sum settlements. These settlements often resemble the payments made as impairment awards in impairment or combined states.

Which is Best?

It is often asked which approach is best, impairment, wage loss, or some combination? we don't believe there is any clear answer to this. we think it depends more on how the system is implemented than which theory is applied.

References

Barth, Peter S., and Michael Niss, 1999, *Permanent Partial Disability Benefits: Interstate Differences*, Cambridge, Massachusetts: Workers' Compensation Research Institute.

Berkowitz, Monroe, and John F. Burton Jr. 1987. *Permanent Disability Benefits In Workers' Compensation*. Kalamazoo, Mich.: W.E. Upjohn Institute for Employment Research.

Burton, John F. Jr., "Permanent Partial Disability Benefits", in Roberts Karen, et al, *Workplace Injuries and Diseases: Prevention and Compensation*, 2005, Kalamazoo, Mich.: W.E. Upjohn Institute for Employment Research.