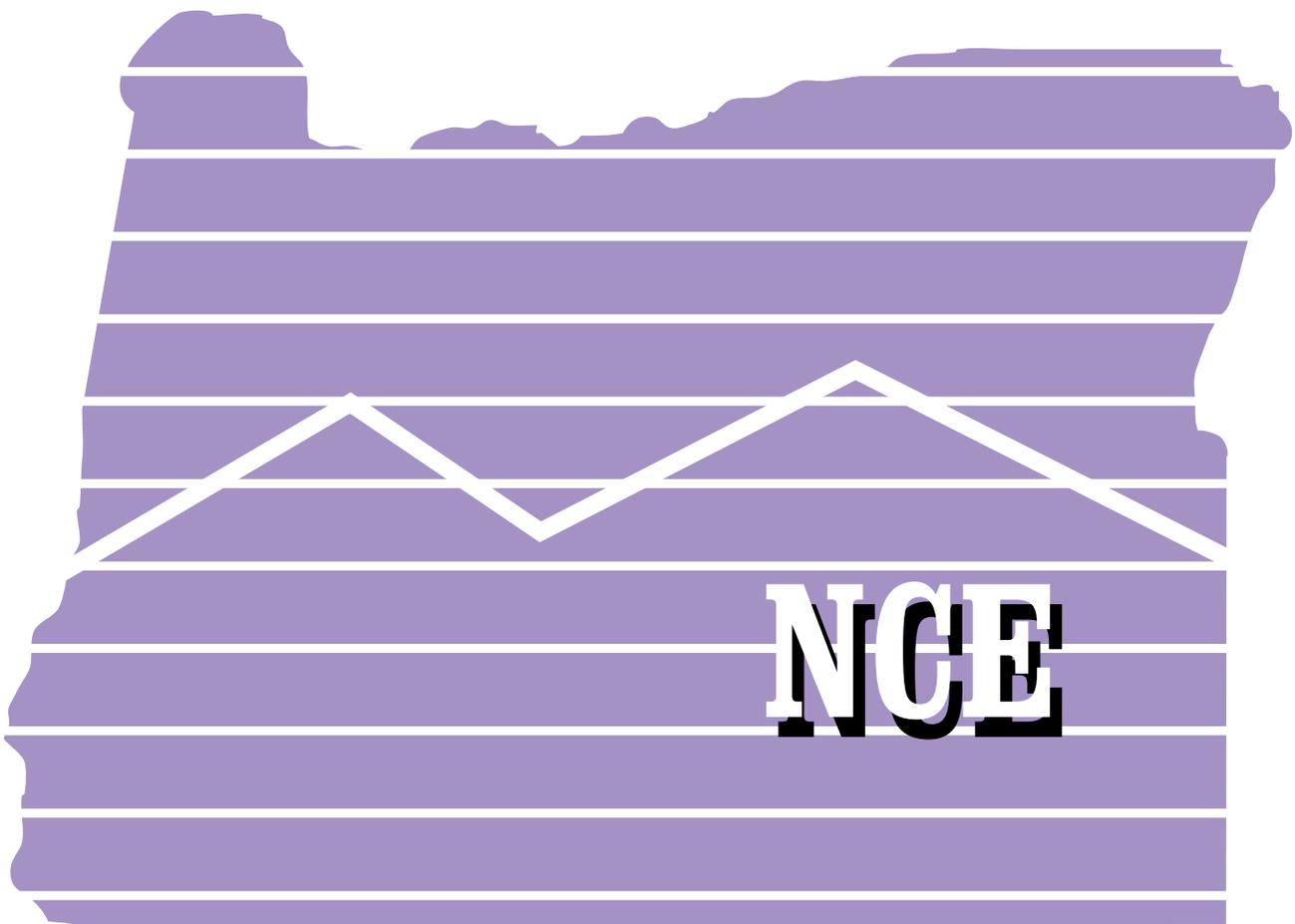


Workers' Compensation Noncomplying Employers in Oregon, Calendar Year 1995



Research & Analysis Section
Oregon Department of Consumer
& Business Services

Dept. of Consumer &
Business Services



December 1996

Workers' Compensation Noncomplying Employers in Oregon

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Introduction

With few exceptions, companies that employ Oregon workers are obligated to purchase workers' compensation insurance. Employers may purchase insurance through private insurers or the SAIF Corporation, or they may become self-insured employers. This report looks at the employers known to have violated workers' compensation law by not providing coverage for their workers.

Within the Department of Consumer and Business Services (department), the Workers' Compensation Division Compliance Section is responsible for investigating suspected noncompliance, issuing noncompliance orders and issuing penalties. The Business Administration Division Collections Section is responsible for collecting civil penalties and charges for claims. The SAIF Corporation is the agent handling the workers' compensation claims of employees injured while working for noncomplying employers.

Noncomplying employers (NCEs) often become known to the department after a workplace injury occurs. Under Oregon law, people who are injured while working for a NCE have the same right to medical care and compensation as do other workers. Workers' compensation claims for employees of NCEs are sent to the department. They come from workers or their attorneys seeking to recover medical costs or time loss wages. Claims also come from doctors seeking to recover their costs. Once the department determines that the employer is subject to workers' compensation law and does not have insurance coverage, SAIF Corporation handles the claim.

Noncomplying employers without claims are also reported to the department. These reports come from former or disgruntled employees, business competitors and others. There are also special programs within the department to find NCEs. In a new cooperative

program between the Workers' Compensation Division (WCD) and Oregon OSHA, health and safety inspectors ask about workers' compensation compliance during their inspections. Also, the State Police Gaming Enforcement Section now checks businesses seeking lottery licenses for workers' compensation compliance. The Construction Contractors Board also checks compliance before issuing licenses.

The WCD also engages in educational activities. Within the department, they work with the Small Business Ombudsman to provide information about employer compliance to small employers. They also work with the Construction Contractors Board and the Oregon Liquor Control Commission to provide information.

When noncomplying employers are identified, the department issues civil penalties. Additional civil penalties are imposed for continued noncompliance and for workplace injuries. NCEs are also liable for all of the claim costs of injured workers. The department pays the claims costs from its assessments on workers' compensation premiums. This money comes from complying employers. Therefore, when the claim costs cannot be recovered from the NCEs, Oregon's complying employers bear the costs.

The data in this report include the number of noncomplying employers over the ten-year period 1986-95, the number of workers' compensation claims, the cost of these claims, the geographic distribution of the claims, and the amounts these companies were penalized for not complying with the law. The limitation of this report is that we can provide information only on those noncomplying employers that have come to the attention of the department; other companies also may have avoided the workers' compensation law at some point during this 10-year period.

Highlights

The number of claims filed by employees of noncomplying employers has declined throughout the 1990s. There were 60 percent as many NCE claims in 1995 as in 1991. About 37 percent of these claims were accepted disabling claims (ADC). The number of NCEs with an ADC claim dropped from 216 in 1991 to 130 in 1995.

Accepted disabling NCE claims are a shrinking proportion of all ADC claims — falling from 0.74 percent of all ADC claims in 1991 to 0.46 percent in 1995.

During the 10-year period 1986-95, only 65 percent of the disabling claims submitted by the employees of NCEs were accepted. For comparison, about 85 percent of all disabling claims were accepted by insurers during the same period.

In 1991-95, nearly a quarter of the accepted disabling NCE claims were from the retail sector. Over two-thirds of the ADC claims from this sector were from eating and drinking establishments. Over 21 percent of the accepted disabling NCE claims were from the services sector. Almost half of the accepted disabling claims within this sector were from business services companies (often building service companies) or auto repair and service companies.

The construction and agriculture sectors were the industrial sectors with the highest noncompliance levels: 1.18 percent of all ADC claims in the construction industry and 1.13 percent of all ADC claims in the agriculture sector were from employees of NCEs.

The two sectors with comparatively few accepted disabling NCE claims were the manufacturing and wholesale trade sectors. While these two sectors accounted for over 32 percent of all private sector ADC claims, they accounted for less than 14 percent of the accepted disabling NCE claims. Many of the employees in these two sectors are employees of large established employers, while most NCEs are small employers.

For 1991-95, NCE claims were almost 90 percent more costly than average, and the workers had more than double the average number of time loss days. Accepted disabling NCE claims are more severe than average. The four most common types of costly injuries (amputations, dislocations, fractures and multiple injuries) accounted for 15 percent of all closed ADC claims in 1991-95. In contrast, they accounted for 30 percent of the accepted disabling NCE claims. Even after accounting for the differences in the types of injuries, NCE claims remain more costly. In 1995, the average cost of an NCE claim in the four above categories was \$26,900, 50 percent higher than the \$17,800 cost of an average claim in the same four categories.

Over the 10-year period 1986-95, 16 people died of compensable injuries or illnesses while working for NCEs. This is 2.36 percent of all workers killed during this period.

The number of known noncomplying employers has declined significantly, from 1,078 in 1986 to 615 in 1994. The decline throughout the 1990s occurred while the number of employers covered by workers' compensation increased. Along with the investigation and enforcement work done by the WCD Compliance Section, there are several reasons for the decline in the number of NCEs throughout the 1990s. The Oregon economy has been healthy, so employers may have been less likely to try to save money by foregoing workers' compensation insurance. Workers' compensation premium rates declined nearly 36 percent from 1991 to 1995, making workers' compensation insurance more affordable. Also, changes to the workers' compensation system have made it easier for small employers to get coverage.

During the 1990s, just over half of the NCEs ended their noncompliance by purchasing workers' compensation insurance. The data also suggest that less than a quarter of the companies ended their noncompliance by going out of business; the other companies ended their noncompliance by continuing without subject employees.

Workers' Compensation Claims for NCEs

As shown in Figure 1, the number of claims received by the department for injuries to the employees of noncomplying employers has risen and fallen over the ten-year period 1986-95. After reaching a plateau in 1989-91, the number of claims has declined steadily. There were only 60 percent as many NCE claims in 1995 as in 1991. (As of July 1996, the projected number of NCE claims in 1996 is about the same as the number in 1995.) About 37 percent of these claims were accepted and disabling (the definition of accepted disabling claims (ADC) is in Appendix A). Besides declining in absolute numbers, accepted disabling NCE claims have also been a decreasing proportion of all ADC claims, falling from 0.74 percent of all ADC claims in 1991 to 0.46 percent in 1995.

The number of noncomplying employers whose workers have filed claims has also declined since 1991. There were 880 employers with accepted disabling

NCE claims during 1991-95. While more than 90 percent of these employers had only one accepted disabling claim, 54 employers had two ADC claims, and 14 employers had at least three ADC claims.

During the 10-year period, about 85 percent of all disabling claims were accepted by insurers. In contrast, only 65 percent of the disabling claims submitted by the employees of NCEs were accepted. Some of this difference is due to SAIF's practices — SAIF normally accepts a somewhat lower percentage of cases than do other insurers (in 1990 and 1991 SAIF pursued an especially rigorous denial policy). Most of the difference, however, is due to other reasons. The principal reason probably has to do with the employer-employee relationship for these NCEs. Many researchers believe that workers' compensation programs work best when employers and employees have a strong commitment to each other. From the

Figure 1. NCE claims, Oregon, 1986-95

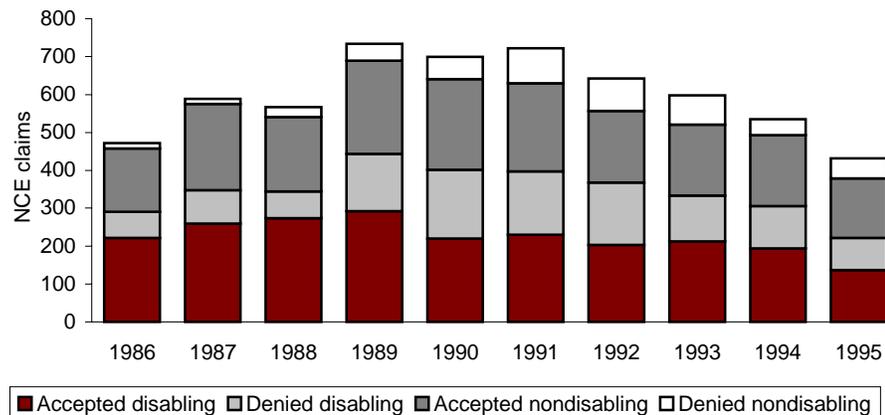


Table 1. NCE claims, Oregon, 1986-95

	1986	1987	1988	1989	1990	1991	1992	1993	1994	1995	Total
NCE claims	472	589	567	734	699	722	642	598	535	432	5,990
Accepted disabling NCE claims	221	259	273	292	220	230	203	212	194	137	2,241
ADC NCE claims as % of all ADC claims	0.55%	0.63%	0.65%	0.73%	0.61%	0.74%	0.66%	0.68%	0.61%	0.46%	0.63%
% of disabling NCE claims accepted	76.2%	74.6%	79.4%	65.8%	54.7%	57.9%	55.3%	63.7%	63.6%	62.0%	65.0%
% of all disabling claims accepted	87.1%	87.3%	88.7%	84.6%	82.8%	82.6%	84.6%	85.8%	85.4%	84.5%	85.4%
Empl with NCE claims	407	483	451	596	583	601	552	517	451	385	4,524
Empl with ADC NCE claims	200	230	235	253	205	216	193	189	179	130	1,941

Notes: Claims are reported by the year in which they were set up on the computer system. The acceptance status of the claims is the status as of 7/96; future litigation may change the acceptance status of some claims. Deferred claims are counted as accepted; withdrawn claims are excluded. Employers with multiple claims are counted once in each year and once in the total.

employer's side, this involves providing a safe work site to reduce the risk of accidents and helping injured workers get quickly back to work. From the worker's side, it involves working safely and after an accident honestly reporting on his or her medical condition and ability to return to work. An employer who has knowingly avoided buying workers' compensation insurance hasn't lived up to his or her commitments. Therefore, it should not be surprising to see unhappy injured workers filing claims which are unlikely to be accepted. Therefore, it is likely the department receives

a disproportionate share of the ambiguous and contentious cases, leading to the high claim denial rate.

In this report we usually report the total number of NCE claims and the number of accepted disabling NCE claims. The overall numbers provide a general idea of the size of the problem with NCEs and are useful to show trends. ADC counts are the department's usual measure of claims, and ADC NCE claims are useful for comparison to the set of all ADC claims.

Accepted Disabling NCE Claims by Industry

This section provides data on the accepted disabling NCE claims for 1991-95. Table 2 lists the number of NCE claims by industrial sector and by important industries within some sectors. Because almost all NCE claims come from the private sector, only private sector data are included in Table 2 and Figure 2; claims for which the employers' industry were not known are also excluded. Figure 2 compares the distribution of accepted disabling NCE claims by industry to the distribution of all private sector ADC claims during 1991-95. Figure 3 compares the distribution of accepted disabling NCE claims by occupation to the distribution of all private sector ADC claims during the same period. Figure 3 reinforces the conclusions drawn from the data in Figure 2.

Nearly a quarter of the accepted disabling NCE claims were from the retail sector. Of the 232 accepted disabling claims from this sector, 161 were from eating and drinking establishments. While 0.70 percent of all private sector ADC claims were from NCEs, 1.83 percent of the ADC claims for eating and drinking establishments were from NCEs. These restaurants and taverns often come into and go out of business fairly quickly, have little capital and are staffed with part-time workers who have a high turnover. The high noncompliance rate of restaurants has been known to the department, and enforcement efforts may be having an effect: the number of ADC claims for eating and drinking establishments dropped from 41 in 1991 to 22 in 1995.

Thirty-three of the other 71 accepted disabling NCE claims in the retail sector were from automotive dealers and service stations or from food stores.

Over 21 percent of the accepted disabling NCE claims were from the services sector. Almost half of the accepted disabling claims within this sector were from business services companies (often building service companies) or auto repair and service companies. There has been no decline in the number of NCE claims from these industries over the past five years. Social services (mostly child care facilities) and health services (mostly nursing and personal care facilities), recreation services, and hotels and motels provided many of the other claims in this sector.

The construction and agriculture sectors were the industrial sectors with the highest noncompliance levels: 1.18 percent of all ADC claims in the construction industry and 1.13 percent of all ADC claims in the agriculture sector were from employees of NCEs. These are both areas in which the status of employer and employee can be ambiguous. Within the construction sector, 92 ADC claims were for employees of special trade contractors, most involving carpentry, roofing and siding, plumbing and heating, and painting and paper hanging. An additional 68 claims were for employees of general building contractors, mostly residential housing contractors. These 68 NCE claims were 2.36 percent of all ADC claims for general contractors.

About 80 percent of the accepted disabling NCE claims in the transportation and public utilities sector were from the trucking and warehousing industry (almost all of the claims were against trucking companies). This is another area in which there are disputes about the relationship between employer and employee. It is also an area in which there has been

Table 2. NCE claims by industry, 1991-95

Industry	NCE claims	Disabling NCE claims	ADC NCE claims
Farming, forestry, fishing	213	139	72
Mining	6	4	3
Construction	424	273	165
General building contractors	156	111	68
Special trade contractors	255	155	92
Manufacturing	279	145	96
Lumber & wood products	110	67	45
Transportation/public utilities	266	169	111
Trucking & warehousing	203	130	88
Wholesale trade	73	50	34
Retail trade	830	379	232
Eating & drinking establishments	584	263	161
Finance, insurance, real estate	88	49	23
Services	642	350	201
Business services	157	91	52
Auto repair & service	141	66	46
Private sector total, excluding unknown	2,821	1,558	937

Notes: Claims are reported by the year in which they were set up on the computer system. Three public sector and 105 private sector claims for which the industry was unknown are excluded.

Figure 2. Claim distribution by industry, private sector, 1991-95

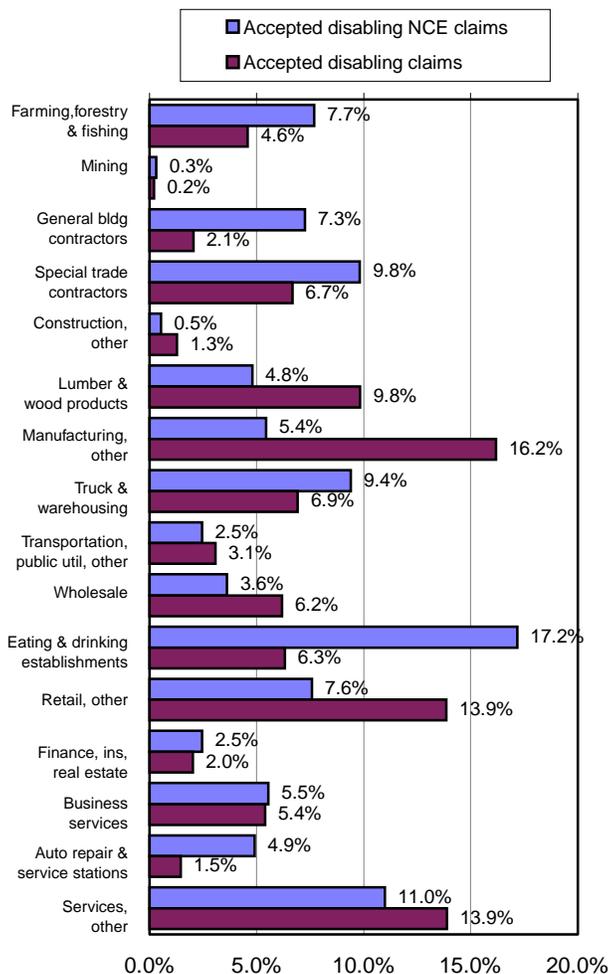
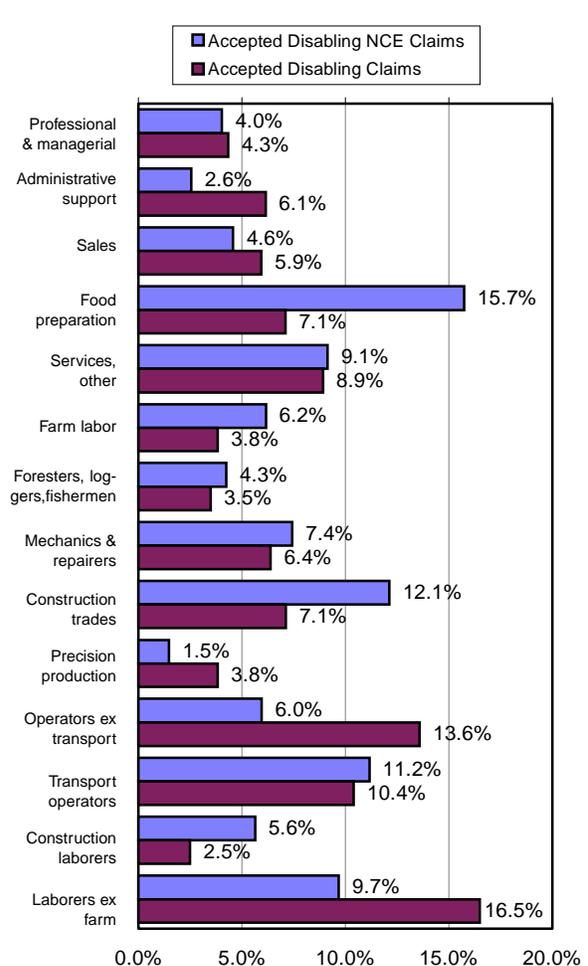


Figure 3. Claim distribution by occupation, private sector, 1991-95



no decline in the number of claims over the past five years.

The two sectors with comparatively few accepted disabling NCE claims were the manufacturing and wholesale trade sectors. While these two sectors accounted for over 32 percent of all private sector ADC claims, they accounted for less than 14 percent of the

accepted disabling NCE claims. This is probably because many of the workers in these two sectors are employees of large established employers, while most NCEs are small employers. Within the manufacturing sector, there were 45 accepted disabling NCE claims in the lumber and wood products industry — over half of these claims were from the logging industry.

Costs of Accepted Disabling NCE Claims

Table 3 compares the average cost of accepted disabling NCE claims to all ADC claims for the past five years. Data are reported by the year in which the claim was closed.

For 1991-95, NCE claims were almost 90 percent more costly than the average of all closed ADC claims. The workers had more than double the average number of time loss days. Accepted disabling NCE claims are more severe than average. The four most common

types of costly injuries (amputations, dislocations, fractures and multiple injuries) accounted for 15 percent of all closed ADC claims in 1991-95. In contrast, they accounted for 30 percent of the accepted disabling NCE claims closed during those five years. Even after accounting for the differences in the types of injuries, NCE claims remain more costly. In 1995, the average cost of an NCE claim in the four categories above was \$26,900, 50 percent higher than the \$17,800 cost of an average claim in these same four categories.

Table 3. Costs of accepted disabling NCE claims, Oregon, 1991-95 by year of claim closure

NCE claims	1991	1992	1993	1994	1995	1991-95
Claims closed	223	220	198	226	139	1,006
Average costs						
Medical	\$8,533	\$7,790	\$8,828	\$7,733	\$7,409	\$8,094
Time loss	\$8,189	\$7,694	\$8,368	\$7,400	\$6,927	\$7,764
PPD awards	\$2,372	\$2,699	\$3,668	\$3,268	\$3,078	\$2,997
Ave. total costs	\$19,094	\$18,183	\$20,863	\$18,401	\$17,415	\$18,855
Ave. time loss days	231	196	215	165	177	198
All ADC claims	1991	1992	1993	1994	1995	1991-95
Average costs						
Medical	\$4,931	\$4,778	\$4,900	\$4,675	\$4,806	\$4,820
Time loss	\$4,161	\$3,776	\$3,611	\$3,444	\$3,383	\$3,686
PPD awards	\$1,284	\$1,551	\$1,616	\$1,629	\$1,691	\$1,548
Ave. total costs	\$10,376	\$10,105	\$10,126	\$9,747	\$9,880	\$10,054
Ave. time loss days	92	81	76	72	68	78

Notes: Claims are reported by the year in which they were closed.

Costs are the estimated costs at the time of claim closure.

PPD awards are the awards made at the time of claim closure for permanent partial disability.

The total costs exclude permanent total disability and fatality benefits, all DCS and CDA amounts, and all litigation.

As mentioned earlier, during 1991-95, 0.70 percent of all private sector ADC claims were from noncomplying employers. In comparison, 1.27 percent of the closed claims that involved one of the four above major conditions were from employees of NCEs, and 2.81 percent of the amputation claims were from NCEs.

Again, noncomplying employers and their employees may have little loyalty to each other. In many of these cases, when a worker is injured and can't work, they are fired. This may be a factor in the large difference in time loss days and the difference in time loss benefits, differences that are larger than the difference in medical benefits.

Fatalities for NCEs

Over the 10-year period 1986-95, 677 people died on the job of compensable injuries or illnesses. Sixteen of these people, 2.36 percent of the total, were working for noncomplying employers at the time of their fatal injury. This is a high figure compared to the 0.70 percent of all private sector ADC claims that came from noncomplying employers.

Five of the fatalities occurred in the service sector. Three of these deaths were the result of accidents involving motor vehicles; the other two were the result of inhalation of either finishes or acids. Five more deaths occurred in the wholesale and retail sectors.

Two of the deaths were caused by shootings, and two were caused by motor vehicle accidents. The fifth man died of a heart attack. The other six deaths were spread among the agriculture, construction, manufacturing and transportation industries. Three of the deaths were from motor vehicle accidents, and three were the result of falls or being struck by falling objects.

Six of the fatalities occurred in the Portland area, six occurred in Southwest Oregon, one occurred in Eastern Oregon, and three occurred outside the state.

Geographic Distribution of NCE Claims

The geographic distribution of NCE claims is shown in Table 4. Claims are reported by the county of each employer's operating location, the location at which, or out of which, the person was working when injured.

Two-thirds of the accepted disabling NCE claims were from noncomplying employers in the Portland or the Willamette Valley regions. However, after Central Oregon, these regions also had the lowest levels of noncompliance — 0.63 percent of all ADC claims came from noncomplying employers. In the Portland area, 112 of the 427 accepted disabling NCE claims came from service sector employers, and 97 came from retail establishments. Another 73 accepted disabling claims came from the construction sector. In the Willamette Valley region, the construction sector had the most claims — 47 of the 207 accepted disabling claims. Over 3 percent of all ADC claims

from general contractors in the Willamette Valley region were from NCEs. The retail and services sector had a total of 80 accepted disabling NCE claims. Also, 23 of the 72 ADC NCE agriculture claims came from the Willamette Valley.

Northwest Oregon and Southwest Oregon had the highest levels of noncompliance; just over one percent of the Northwest Oregon claims were from NCEs. In Northwest Oregon, over 3 percent of all ADC claims in eating and drinking establishments were from NCEs.

In Southwest and Central Oregon, the trucking industry and the services sector followed the retail sector with the most ADC claims. In Eastern Oregon, the retail sector, the trucking industry and the services sector each produced nine ADC NCE claims.

Table 4. NCE claims by geographic region, Oregon, 1991-95
(county of operation)

Region	NCE claims	Disabling NCE claims	ADC NCE claims	% disabling claims accepted	Dist of ADC NCE claims	% ADC NCE of all ADC claims
Portland	1,287	696	427	61.4%	44.7%	0.63%
Willamette Valley	658	372	207	55.6%	21.7%	0.63%
SW Oregon	438	255	168	65.9%	17.6%	0.92%
NW Oregon	154	90	55	61.1%	5.8%	1.04%
Central Oregon	185	86	47	54.7%	4.9%	0.60%
Eastern Oregon	144	81	52	64.2%	5.4%	0.75%
Total, excluding unknown	2,866	1,580	956	60.5%	100.0%	0.69%

Notes: Claims are reported by the year in which they were set up on the computer system.

Claims are reported by the county of the employer's operation.

Sixty-three claims, including 20 accepted disabling claims, for which the county of operation was unknown are excluded.

For this report, the geographic regions are defined as:

Portland : Multnomah, Clackamas and Washington counties;

Willamette Valley : the six valley counties from Yamhill County to Lane County;

SW Oregon : the six counties from Klamath County west to the coast;

NW Oregon : Columbia, Clatsop, Tillamook and Lincoln counties;

Central Oregon : Hood River, Wasco, Sherman, Gilliam, Jefferson, Wheeler, Crook and Deschutes counties;

Eastern Oregon : 9 counties in the eastern half of the state.

Noncomplying Employers

This section provides data on the noncomplying employers known to the department. The number of employers is larger than the number provided in the earlier sections because NCEs become known to the department in ways other than through claims. Along with the department's own investigations, NCEs are reported by employees, former employees, business competitors and others.

In this section, the yearly count of NCEs is defined as the number of employers whose period of noncompliance began during that year. Using this definition, over the 1986-1995 period, 7,693 employers are known to have been noncomplying at some time. Of these, 515 employers had at least two separate periods of noncompliance; 37 employers had two

periods of noncompliance within a single year. Because NCEs are continually being identified, this data is incomplete. As of July 1996, 404 employers had been identified with noncompliance beginning in 1995, but if past trends hold, the final number of 1995 NCEs will exceed 500. On the basis of past trends, we have assumed that the data prior to 1995 is nearly complete.

The number of noncomplying employers has declined significantly, down from 1,078 in 1986 to 615 in 1994 (see Figure 4). This decline throughout the 1990s occurred while the number of employers covered by workers' compensation increased. The number of registered employers dropped in 1990 because SAIF Corporation canceled the policies of a large number

Figure 4. NCE & registered employers, Oregon, 1986-94

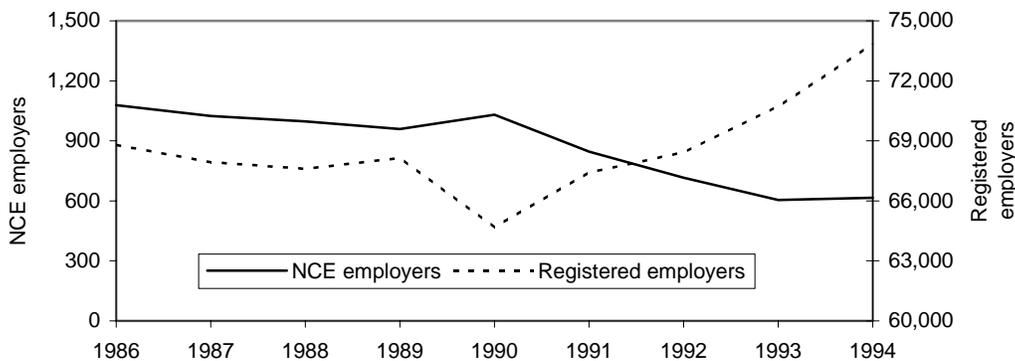


Table 5. Noncomplying employers, Oregon, 1986-95

	1986	1987	1988	1989	1990	1991	1992	1993	1994	1995
Noncomplying Employers	1,078	1,025	998	959	1,030	846	716	604	615	404
Noncompliance has ended	1,078	1,024	996	957	1,026	843	705	581	548	298
Became insured	547	501	469	425	523	442	353	295	290	187
% which became insured	51%	49%	47%	44%	51%	52%	50%	51%	53%	63%
Currently insured & in business (7/96)	168	153	157	172	254	209	196	158	189	157
Length of noncompliance:										
3 months or less	35%	33%	32%	23%	21%	28%	23%	31%	27%	25%
1 year or less	79%	77%	81%	73%	69%	73%	70%	68%	71%	N/A

Notes: 1995 data is incomplete; earlier data may be slightly incomplete.

The figures are the number of employers with noncompliance periods beginning in each of the years.

Over the 1986-95 period, there have been 515 companies with at least two periods of noncompliance;

there were 37 companies with two periods of noncompliance within a single year.

Companies whose noncompliance began prior to 1992 and for whom the department has no record that noncompliance has ended have probably gone out of business.

of companies and because new companies had difficulty finding insurance.

Both the policies of SAIF and the general health of Oregon’s workers’ compensation system have had an effect on NCEs. During 1988-90, when there were many problems in the workers’ compensation system, about 56 percent of the NCEs had had workers’ compensation insurance at some time prior to their noncompliance. Seventy-six percent of those NCEs with prior coverage had been insured with SAIF. More recently, during 1992-94, about 47 percent of the NCEs have had workers’ compensation insurance prior to becoming noncomplying. This indicates fewer companies are dropping coverage. Fifty-six percent of those with prior insurance had been covered by SAIF.

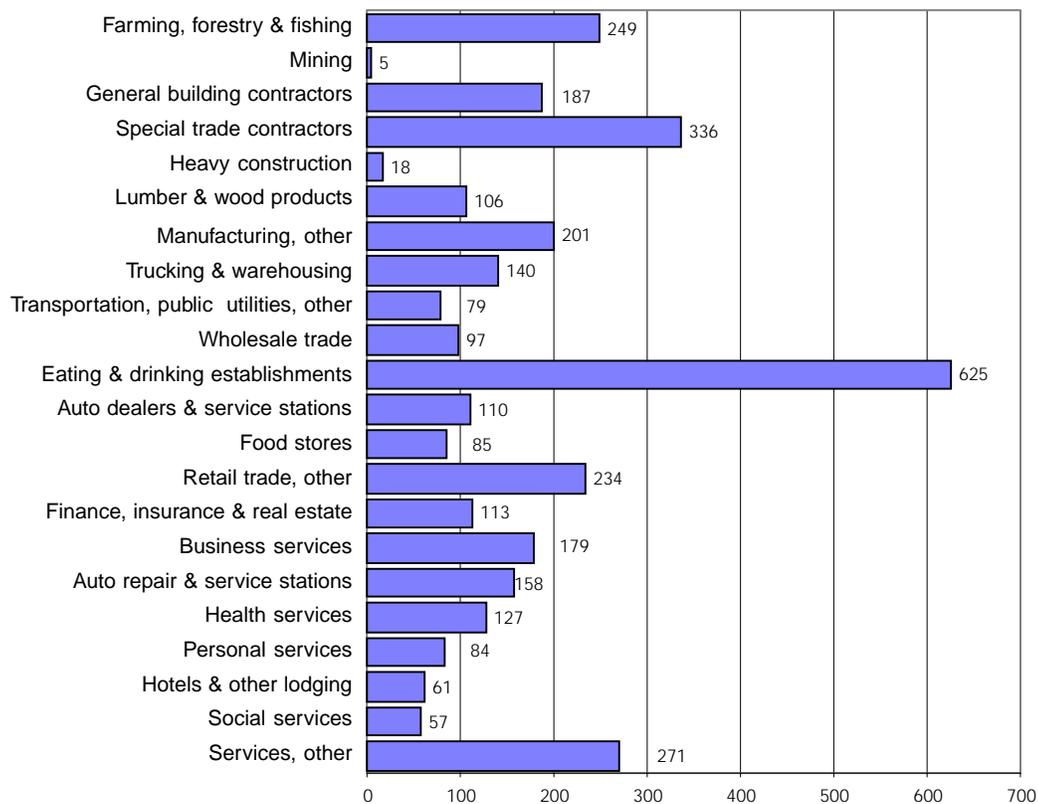
Along with the investigation and enforcement work done by the WCD Compliance Section, there are several reasons for the decline in the number of NCEs throughout the 1990s. The Oregon economy has been healthy, so employers may have been less likely to try to save money by foregoing workers’ compensation insurance. Workers’ compensation premium rates declined nearly 36 percent from 1991 to 1995, making workers’ compensation insurance more affordable.

Also, changes to the workers’ compensation system have made it easier for small employers to get coverage. All these factors should lead to fewer companies becoming NCEs and to fewer existing companies dropping coverage.

During the 1990s, just over half of the noncomplying employers ended their noncompliance by purchasing workers’ compensation insurance. The data also suggest that less than a quarter of the companies ended their noncompliance by going out of business; the other companies ended their noncompliance by continuing business without subject employees.

Figure 5 shows the number of employers who were identified as noncomplying during 1990-94 (employers with multiple periods of noncompliance are counted just once). Of the 3,625 employers, 177 had two or three separate periods of noncompliance during these five years. Most noncomplying employers are small employers — almost half of the NCEs in 1990-94 had just one or two employees; 12 percent had more than 10 employees. Fifty-seven percent of these employers had at least one employee file a workers’ compensation claim. Nearly a quarter of the injuries for which claims were filed occurred within the first month of employers’ noncompliance.

Figure 5. Noncomplying employers, by private sector industry, 1990-94



Note: Two public sector agencies and 101 private sector companies for which the industry was unknown are excluded.

NCE Claim Charges and Civil Penalties

Noncomplying employers are obligated to pay all the claim costs arising from injuries to their employees. They are also assessed civil penalties (these penalties are described in Appendix B). Table 6 shows the amounts charged and collected in fiscal years FY91-96. The amount of civil penalties assessed jumped in FY96 as a result of increased maximum penalties included in Senate Bill 369, which was passed during the 1995 legislative session.

noncomplying are usually assessed the maximum civil penalty allowed. The amount of this penalty can be significantly reduced, however, if the employer chooses not to contest the finding of noncompliance and shows that the company is either no longer a subject employer or that it has arranged for workers' compensation coverage. With the increased penalties in SB369, this has become an even more attractive option.

The department's collection program includes a penalty reduction option. Employers found to be

Table 6. NCE charges and collections, FY91-96

	FY91	FY92	FY93	FY94	FY95	FY96
Claims charges	\$6,861,402	\$6,323,490	\$7,090,378	\$6,570,990	\$5,472,427	\$5,463,183
Amount collected	\$1,200,844	\$1,421,041	\$1,701,684	\$1,650,877	\$2,277,425	\$1,917,333
Civil penalties	\$751,307	\$1,692,112	\$1,770,652	\$1,849,105	\$1,470,195	\$3,505,213
Penalty reductions	\$26,036	\$80,060	\$312,264	\$486,126	\$188,198	\$236,383
Penalty write-offs	\$11,534	\$0	\$277	\$0	\$119,793	\$187,649
Amount collected	\$251,822	\$574,830	\$661,593	\$606,863	\$608,471	\$653,876
# of final civil penalty orders					1,193	928

Notes: Amounts are reported by the date charged, collected or written off.

Claims charges includes administrative costs.

The collection amounts do not include the interest collected.

Penalty reductions are negotiated with NCEs that do not challenge noncompliance orders and who obtain coverage.

Penalty write-offs are amounts written off as part of compromise settlements.

The numbers of final orders are available only for FY95 and FY96.

Glossary

Accepted disabling claims: Claims accepted by insurers and received by the Workers' Compensation Division for occupational injuries or illnesses. A disabling injury or illness entitles the worker to compensation for disability or fatality. This type of claim excludes temporary disability suffered during the first three calendar days after the employee leaves work as a result of injury or illness, unless the worker is an inpatient in a hospital. If the employee leaves work the day of the injury, that day is considered the first day of the three-day period.

The department: The Oregon Department of Consumer & Business Services. Within the department, the Workers' Compensation Division Compliance Section is responsible for investigating suspected noncompliance, issuing noncompliance orders and issuing penalties. The Business Administration Division Collections Section is responsible for collecting civil penalties and charges for claims.

Disability: The loss of use or function of any portion of the body that incapacitates the worker from regularly performing work at a gainful and suitable occupation, whether temporary or permanent.

Noncomplying employer: An employer of one or more subject workers who has not purchased workers' compensation insurance.

Subject workers: The workers for whom employers must purchase workers' compensation insurance. Generally, all workers are covered except for people working in private homes, casual laborers, workers covered by federal workers' compensation, transport workers employed by out-of-state companies, sole proprietors and corporate officers, and volunteers. The complete definition is in ORS 656.027.

Summary of Current Oregon Workers' Compensation Law Regarding Noncomplying Employers

“No person shall engage as a subject employer unless and until the person has provided coverage ... for subject workers the person employs.” (ORS 656.052(1)). When an investigation shows that an employer is noncomplying, the department serves a noncompliance order and issues a civil penalty. Under current law, the amount of the civil penalty is not more than the greater of \$1000 or twice the premium due for the period of noncompliance (ORS 656.735(1)). The employer may contest the order. If the order is upheld, there is an additional civil penalty for continued noncompliance. This penalty is not more than \$250 for each day the violation continues (ORS 656.735(2)). Under the WCD’s penalty reduction program, these penalties can be reduced to 105 percent of the premium for the first offense and 150 percent of the premium for subsequent violations.

These civil penalty amounts were included in SB 369, which passed during the 1995 legislative session. Prior to that time, the civil penalty for noncompliance was a maximum of \$1000, and the penalty for continued noncompliance was a maximum of \$25 per day.

“A compensable injury to a subject worker while in the employ of a noncomplying employer is compensable to the same extent as if the employer

had complied with this chapter.” (ORS 656.054(1)). Besides the civil penalties, the noncomplying employer is liable for all costs to the Workers’ Benefit Fund. These costs include compensation (medical costs, time loss and disability awards), disputed claim settlements and claim disposition agreements (whether or not the noncomplying employer agrees to these settlements), administrative costs and claims processing costs incurred by SAIF, attorney fees related to compensability issues and attorney fees awarded to the claimant. Also, when the department prevails in any court action, the department is entitled to recover the incurred court costs and attorney fees. (ORS 656.054(3)). Besides these costs, a civil penalty is issued at the time the claim is closed. The amount of this penalty is a minimum of \$100 and can reach one of the following maximums:

- \$500, if the worker suffers no disability;
- \$1,000, if the worker suffers a temporary disability;
- \$2,500, if the workers suffers a permanent partial disability;
- \$5,000, if the worker dies or suffers permanent total disability. (ORS 656.735(3)).

SB 369 did not change these amounts.



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For more information on Oregon
Workers' Compensation visit:

[http://www.cbs.state.or.us/external/
wcd/index.html](http://www.cbs.state.or.us/external/wcd/index.html)