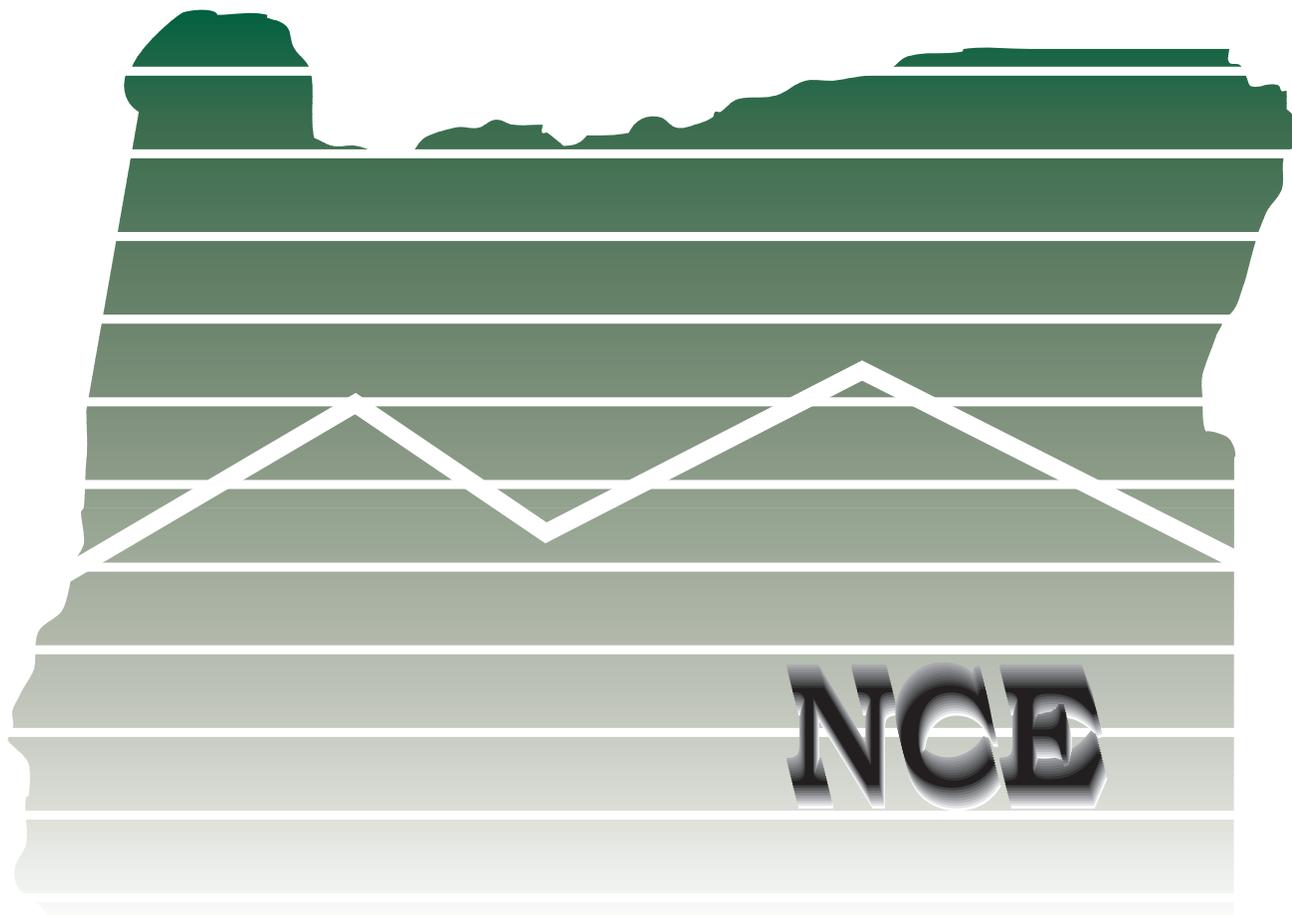


# Workers' Compensation Noncomplying Employers in Oregon, Calendar Year 1997



Research & Analysis Section  
Oregon Department of Consumer  
& Business Services



October 1998

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## Introduction

With few exceptions, companies that employ Oregon workers are obligated to purchase workers' compensation insurance. 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, 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 has been the agent handling the workers' compensation claims of workers injured while working for noncomplying employers. As of August 1st 1998, all new and existing claims will be processed by Johnston and Culberson, Inc. (JCI).

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 by either workers or their attorneys when they want to recover medical costs or time loss wages. Claims can also come from doctors seeking to recover their costs. Once the department determines that the employer is subject to workers' compensation law, JCI then handles the claim.

This report can only provide data on those injuries for which claims were filed. Workers may be reluctant to file claims when their employers are non-complying for a variety of reasons. This leads to some sharp differences between NCE claims and other claims. This can be seen in the different acceptance rates and claim costs.

Noncomplying employers are also reported to the department. These reports come from former or disgruntled employees, business competitors and others. There are also special programs to find NCEs. For example health and safety inspectors for Oregon OSHA, in cooperation with Workers' Compensation Division (WCD), 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.

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 claims costs of injured workers. The department pays the claims costs from its assessment fund. This money comes from complying employers. Therefore, when the claims 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 1988-97, 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; we assume many other companies have also avoided the workers' compensation law at some point during this 10-year period.

## Highlights

The number of NCE claims has declined steadily since 1991. Over the period of 1991 to 1997 claims for NCEs have dropped by half from 722 to 358. About 33 percent of NCE claims, for that period, were accepted disabling claims (ADC). The number of NCEs with an ADC dropped from 216 in 1991 to 107 in 1997.

NCE claims are a shrinking proportion of all ADCs — falling from 0.74 percent of all ADCs in 1991 to 0.61 percent in 1994 and 0.40 percent in 1997.

During the 10-year period 1988-97, only 63 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.

From 1993-97, nearly a quarter of the accepted disabling NCE claims were from the retail sector. Close to two-thirds of the ADCs from this sector were from eating and drinking establishments. Twenty-three percent of the accepted disabling NCE claims were from the services sector. More than half of the accepted disabling claims within this sector were from business services or auto services companies.

The construction and agriculture sectors were the industrial sectors with the highest noncompliance levels: 0.94 percent of all ADCs in the construction industry and 0.97 percent of all ADCs 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 30 percent of all private sector ADCs, they accounted for less than 13 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 1993-97, NCE claims were almost 82 percent more costly than average, and the workers had almost two and one-half times 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 17 percent of all closed ADCs in 1993-97. In contrast, they accounted for 31 percent of the accepted disabling NCE claims. Even after accounting for the differences in the types of injuries, NCE claims remain more costly. In 1997, the combined average cost of a NCE claim, for the four categories above, was \$18,536, 13.7 percent higher than the \$16,300 cost of an average ADC from the same four categories. The most likely explanations for the differences are the underreporting of the less costly accidents by injured workers and the lack of safety programs at the workplaces of NCEs.

Over the 10-year period 1988-97, nine people died of compensable injuries or illnesses while working for NCEs. This is 1.55 percent of all workers killed during this period.

The number of known noncomplying employers has declined steadily since 1988, down from 998 to 463 in 1996. 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 should have been less likely to save money by foregoing workers' compensation insurance. Workers' compensation premium rates have declined 52.4 percent from 1990 to 1997, 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 period between 1990-96, 52 percent of the NCEs ended their noncompliance by purchasing workers' compensation insurance. The data also suggest that 19.5 percent of the companies ended their noncompliance by going out of business; the other companies ended their noncompliance by continuing without subject employees.

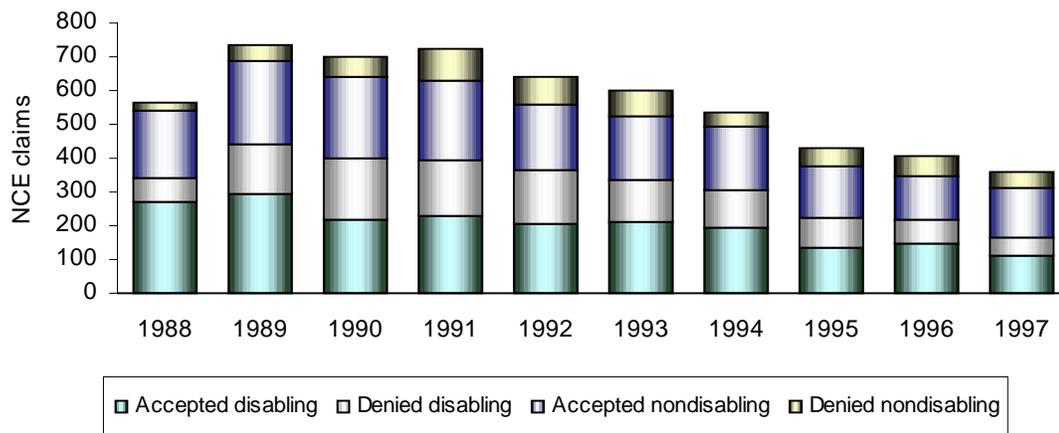
## Workers' Compensation Claims for NCEs

As shown in Figure 1, the number of claims received by the department for injuries to the employees of noncomplying employers has been falling over the seven-year period 1991-97. Since reaching a plateau in 1989-91, the number of claims has declined steadily. There were 50 percent less NCE claims in 1997 as in 1991. About 33 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 ADCs, falling from 0.74 percent of all ADCs in 1991 to 0.40 percent in 1997.

The number of noncomplying employers whose workers have filed claims has also declined during the 90s. A three-year running total shows there were 571 noncomplying employers with accepted disabling claims during the period 1991-93, 482 for 1993-95 and 373 noncomplying employers during the years 1995-97.

For the period 1995-97, 357 or 95.7 percent of these employers had only one accepted disabling claim, 14 employers had two ADCs, and two employers had at least four ADCs.

**Figure 1. NCE claims, Oregon, 1988-97**



**Table 1. NCE claims, Oregon, 1988-97**

	1988	1989	1990	1991	1992	1993	1994	1995	1996	1997	Total
NCE claims	567	734	699	722	642	598	535	432	405	358	5,692
Accepted disabling NCE claims	273	292	220	230	203	212	194	137	146	110	2,017
ADC NCE claims as a % of all ADC claims	0.65%	0.73%	0.61%	0.74%	0.66%	0.68%	0.61%	0.46%	0.51%	0.40%	0.61%
% of disabling NCE claims accepted	79.4%	65.8%	54.7%	57.9%	55.3%	63.7%	63.6%	62.0%	67.9%	67.5%	63.2%
% of all disabling claims accepted	88.7%	84.6%	82.8%	82.6%	84.6%	85.8%	85.4%	84.7%	85.0%	85.2%	85.0%
Emp with NCE claims	451	596	583	601	552	517	451	385	359	327	4363
Emp with ADC NCE claims	235	253	205	216	193	189	179	130	141	107	1761

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 7/98; 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.

During the 10-year period, as shown in Table 1, about 85 percent of all disabling claims were accepted by insurers. In contrast, only 63 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 employer's side, this involves providing a safe work site to reduce the risk of accidents and helping to get injured workers 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 has not lived up to his or her commitments. Therefore, it should not be surprising to see unhappy injured workers filing claims which are not likely to be accepted. As a result, it follows that 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 ADCs.

## Accepted Disabling NCE Claims by Industry

This section provides data on the accepted disabling NCE claims for 1993-97. 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 ADCs during 1993-97. Figure 3 compares the distribution of accepted disabling NCE claims by occupation to the distribution of all private sector ADCs 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 185 accepted disabling claims from this sector, 120 were from eating and drinking establishments. While 0.56 percent of all private sector ADCs were from NCEs, 1.43 percent of the ADCs 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 ADCs for eating and drinking establishments dropped from 41 in 1991, to 22 in 1995 and down to 16 in 1997.

Twenty-five of the other 65 accepted disabling NCE claims in the retail sector were from automotive dealers and service stations and from food stores.

Close to 23 percent of the accepted disabling NCE claims were from the services sector. Just over half of the accepted disabling claims within this sector were from business ser-

vices 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: 0.97 percent of all ADCs in the agriculture sector and 0.94 percent of all ADCs in the construction industry were from employees of NCEs. These are both areas in which the status of employer and employee can be ambiguous. Within the construction sector, 76 ADCs were for employees of special trade contractors, most involving carpentry, roofing and siding, plumbing and heating, and painting and paper hanging. An additional 61 claims were for employees of general building contractors, mostly residential housing contractors. These 61 NCE claims were 2.04 percent of all ADCs for general contractors.

Just over 81 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. Despite these disputes, accepted disabling NCE claims from the trucking and warehouse sector have dropped an average of 24 percent per year since 1994 which could indicate that these legal relationships are becoming clearer.

The two sectors with comparatively few accepted disabling NCE claims were the manufacturing and wholesale trade sectors. While these two sectors accounted for over 30 per-

Table 2. NCE claims by industry, Oregon, 1993-97

	NCE claims	Disabling NCE claims	ADC NCE claims	% of disabling NCE claims accepted
Farming, forestry, fishing	160	94	58	61.7%
Mining	7	6	4	66.7%
Construction	374	231	140	60.6%
General building contractors	146	94	61	64.9%
Special trade contractors	219	132	76	57.6%
Manufacturing	203	97	74	76.3%
Lumber & wood products	65	40	31	77.5%
Transportation & public utilities	201	125	81	64.8%
Trucking & warehousing	156	99	66	66.7%
Wholesale trade	60	36	23	63.9%
Retail trade	625	277	185	66.8%
Eating & drinking establishments	410	175	120	68.6%
Finance, insurance, real estate	64	32	19	59.4%
Services	543	277	171	61.7%
Business services	139	77	50	64.9%
Auto repair & service	143	60	39	65.0%
Private sector total, excluding unknown	2,237	1,175	755	64.3%

Notes: Claims are reported by the year in which they were set up on the computer system.  
 One public sector and 90 private sector claims for which the industry was unknown are excluded;  
 the excluded claims include 33 accepted disabling claims.

Figure 2. Claim distribution by industry, private sector, 1993-97

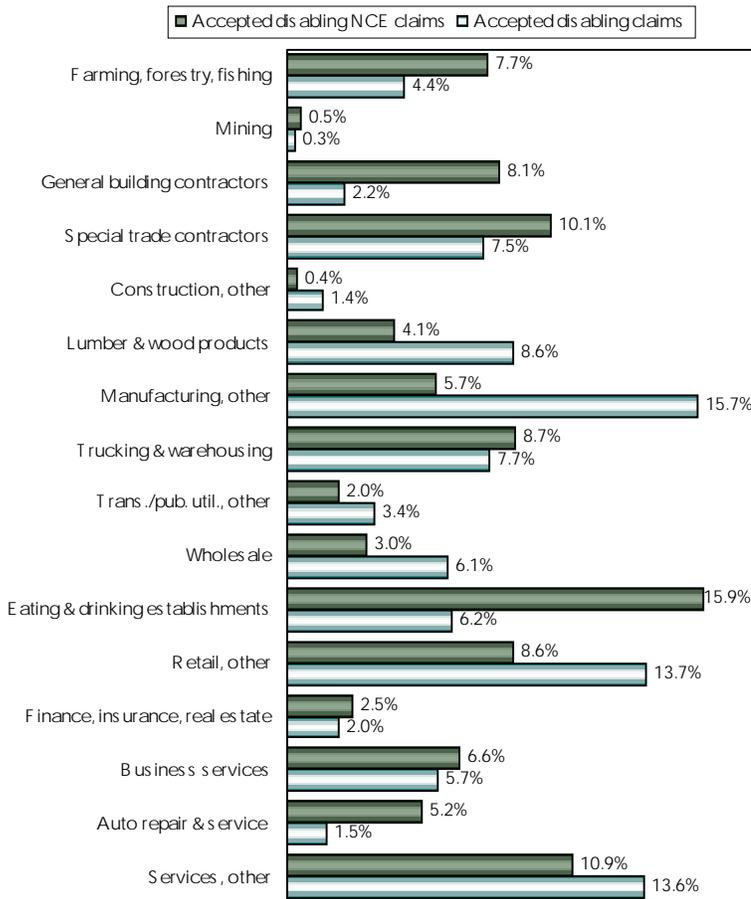
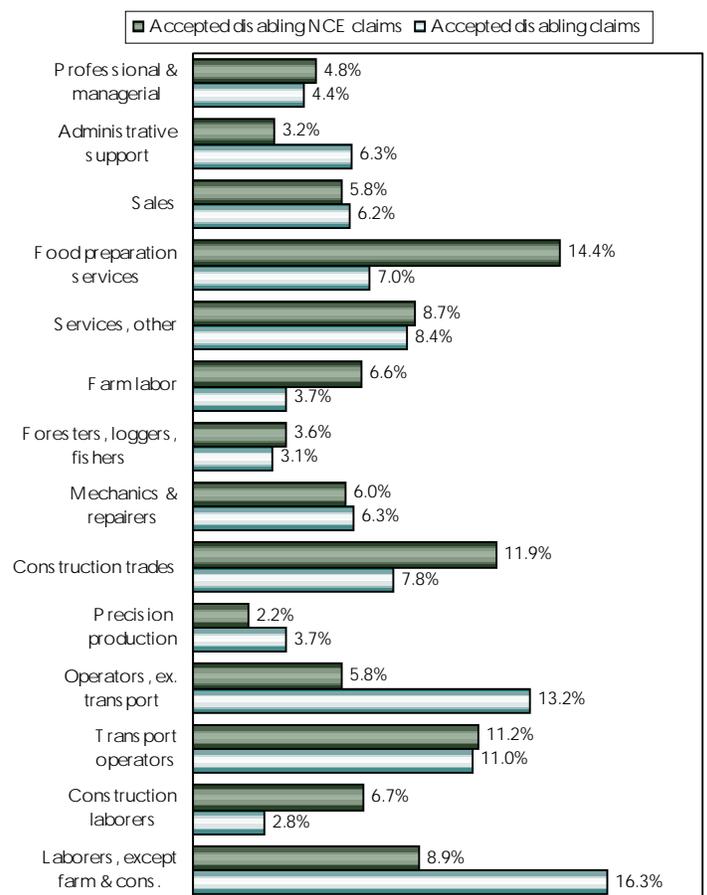


Figure 3. Claim distribution by occupation, private sector, 1993-97



cent of all private sector ADCs, they accounted for less than 13 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 sec-

tor, there were 31 accepted disabling 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 ADCs for the past five years. Data are reported by the year in which the claim was closed.

For 1993-97, NCE claims were almost 82 percent more costly than the average of all closed ADCs. The workers had almost two and one-half times the average number of time loss days. There are several reasons for this. 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 17 percent of all closed ADCs in 1993-97. In contrast, they accounted for 31 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 1997, the combined average cost of a NCE claim for the four above categories was \$18,536, 13.7 percent

higher than the \$16,300 cost of an average ADC from these same four categories.

As mentioned earlier, during 1993-97, 0.56 percent of all private sector ADCs were from noncomplying employers. In comparison, 0.84 percent of the closed claims that involved one of the four above major conditions were from employees of NCEs, and 1.9 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.

Table 3. Costs of accepted disabling NCE claims (by year of claim closure), Oregon, 1993-97

NCE claims	1993	1994	1995	1996	1997	1993-97
Claims closed	198	226	139	166	112	841
Average costs						
Medical	\$8,828	\$7,733	\$7,409	\$6,435	\$8,737	\$7,828
Time loss	\$8,368	\$7,400	\$6,927	\$5,269	\$6,022	\$6,797
PPD awards	\$3,668	\$3,268	\$3,078	\$2,142	\$2,997	\$3,031
Ave. total costs	\$20,863	\$18,401	\$17,415	\$13,846	\$17,756	\$17,656
Ave. time loss days	215	165	177	132	139	169
All ADC claims	1993	1994	1995	1996	1997	1993-97
Average costs						
Medical	\$4,900	\$4,675	\$4,806	\$4,865	\$4,658	\$4,781
Time loss	\$3,611	\$3,444	\$3,383	\$3,106	\$2,961	\$3,301
PPD awards	\$1,616	\$1,629	\$1,691	\$1,820	\$1,811	\$1,713
Ave. total costs	\$10,126	\$9,747	\$9,880	\$9,790	\$9,430	\$9,795
Ave. time loss days	76	72	68	62	58	67

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 costs.

## Fatalities for NCEs

Over the 10-year period 1988-97, 612 people died on the job of compensable injuries or illnesses. Nine of these people or 1.47 percent of the total, were working for noncomplying employers at the time of their fatal injury. When comparing ADC deaths as percentage of all ADCs (0.19 percent), with NCE deaths as a percentage of all NCE claims (0.45 percent), one can see the relatively higher fatal injury rate for workers employed by NCEs. If there was no difference, the 10-year total for NCEs would be three or four ADC for fatal injuries.

Two deaths occurred from each of the following three sectors: the service sector, the wholesale sector, and the farm,

forestry and fishing sector. The remaining deaths occurred, one each, in the trucking and warehousing sector, the construction sector and the manufacturing sector. Five of the deaths were the result of accidents involving motor vehicles. Two of the deaths were the result of being struck by a falling object. The remaining two were by violent act (retail sales) and a fall.

Four of the fatalities occurred in the Tri-County area, four occurred in SW Oregon, and one was an out of state highway accident.

## 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 Tri-County or the Willamette Valley. However these regions also had the lowest levels of noncompliance—0.53 and 0.56 percent, respectively, of all ADCs came from noncomplying employers. In the Tri-County, 90 of the 344 accepted disabling NCE claims came from service sector employers and 77 came from retail establishments. Another 61 accepted disabling claims came from the construction sector. In the Willamette Valley, the construction sector had the most ADCs at 44, the service sector and retail establishments had 36 and 35 claims apiece respectively. Slightly less than 2.5 percent of all ADCs

from general contractors in the Willamette Valley were from NCEs. Fourteen of the 58 ADC NCE agriculture claims, or 24 percent, came from the Willamette Valley and 41 percent came from the Tri-County area.

Northwest Oregon and Eastern Oregon had the highest levels of noncompliance; 0.90 percent of the Northwest Oregon claims were from NCEs; 0.72 percent of the Eastern Oregon claims were from NCEs. In Eastern Oregon, over 2 percent of all ADCs from trucking and warehousing establishments came from NCEs.

In Southwest and Central Oregon, NCEs from eating and drinking establishments accounted for over 2 percent of all ADCs. Over 5.5 percent of ADCs from the mining sector in S.W. Oregon were from NCEs.

Table 4. NCE Claims by geographic region, Oregon, 1993-97

Region	NCE claims	Disabling NCE claims	ADC NCE claims	% Disabling claims accepted	Dist. of ADC NCE claims	% ADC NCE of all ADC claims
Tri-County	1025	530	344	64.9%	44.4%	0.53%
Willamette Valley	530	286	177	61.9%	22.9%	0.56%
SW Oregon	328	171	117	68.4%	15.1%	0.69%
NW Oregon	110	62	44	71.0%	5.7%	0.90%
Central Oregon	151	78	46	59.0%	5.9%	0.58%
Eastern Oregon	131	71	46	64.8%	5.9%	0.72%
Total, excluding unknown	2275	1198	774	64.6%	100.0%	0.58%

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.  
 Fifty-three claims, including 14 accepted disabling claims, for which the county of operation is unknown are excluded.

For this report, the geographic regions are defined as:

Tri-County : 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 : Nine 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 10-year period 1988-97, 6,717 employers were known to have been noncomplying at some time; of these 497 employers had at least two separate periods of noncompliance. Because NCEs are continually being identified, this data is incomplete. As of July 1998, 271 employers had been identified with non-

compliance beginning in 1997, but if past trends hold, the final number of 1997 NCEs will be close to 400. On the basis of past trends, we have assumed that the data prior to 1997 is nearly complete.

The number of noncomplying employers has declined considerably since 1990, from 1,030 to 463 in 1996 (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 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 has had some effect on NCEs.

**Figure 4. NCE & registered employers, Oregon, 1987-96  
(1997 data are incomplete)**

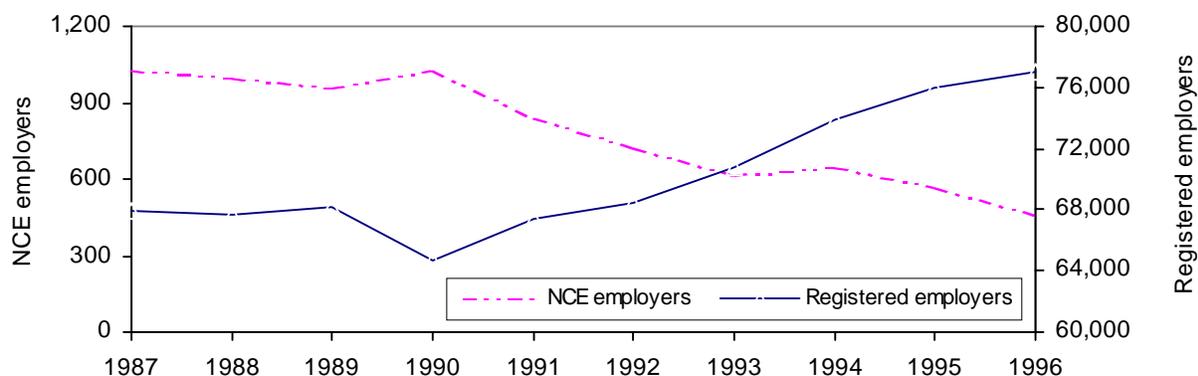


Table 5. Noncomplying employers, Oregon, 1987-97

	1987	1988	1989	1990	1991	1992	1993	1994	1995	1996	1997
Noncomplying employers	1025	998	959	1030	846	716	604	615	568	463	271
Noncompliance has ended	1025	998	958	1030	845	716	601	608	545	400	208
Became insured	502	469	424	524	441	354	296	285	303	240	156
% which became insured	49%	47%	44%	51%	52%	49%	49%	47%	56%	60%	75%
Currently ins. & in business (7/98)	129	137	146	205	174	152	124	174	189	164	125
Length of noncompliance:											
Three months or less	33%	32%	23%	21%	28%	23%	31%	27%	20%	19%	31%
One year or less	77%	81%	73%	69%	73%	71%	68%	72%	59%	59%	68%

Notes: 1997 data are incomplete; data prior to 1997 may change.  
 The figures are the number of employers with noncompliance periods beginning in each of the years.  
 Companies with multiple periods of noncompliance are counted multiple times.  
 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.

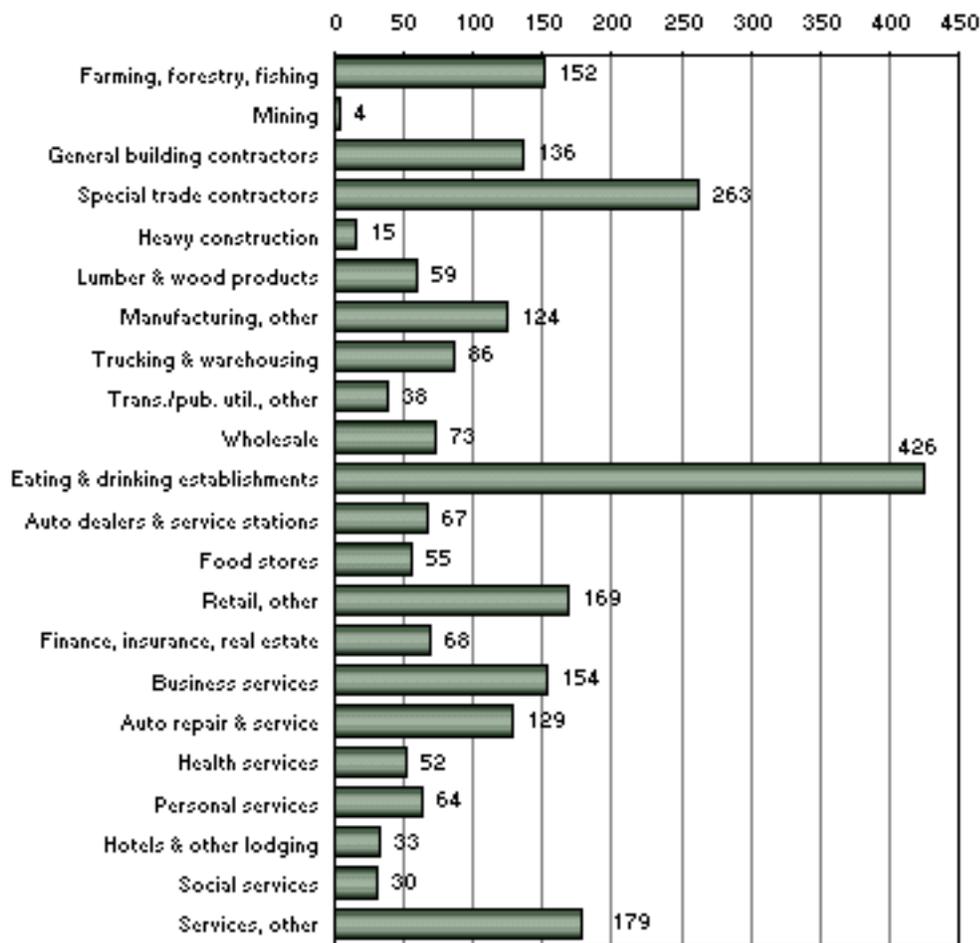
During 1988-90, when there were many problems in the workers' compensation system, about 56 percent of the NCEs had workers' compensation insurance at some time prior to their noncompliance. Seventy-six percent of those NCEs with prior coverage had been insured with SAIF. During 1994-96, about 49 percent of the NCEs have had workers' compensation insurance prior to becoming noncomplying. Fifty-three 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 should have been less likely to save money by foregoing workers' compensation insurance. Workers' compensation premium rates have declined nearly 52.4 percent from 1990 to 1997, 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 have led to fewer companies becoming NCEs and to fewer existing companies dropping coverage.

During the 1990s, 52 percent of the noncomplying employers ended their noncompliance by purchasing workers' compensation insurance. The data also suggest that 19.5 percent of 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 1993-97 (employers with multiple periods of noncompliance are counted just once). Of the 2,520 employers, 64 had two separate periods of noncompliance during these five years. Most noncomplying employers are small employers — almost half of the NCEs in 1993-97 had just one or two employees; 11 percent had more than 10 employees. Fifty-five percent of the 2,520 employers had at least one employee file a workers' compensation claim. Nearly 24 percent of the injuries for which claims were filed occurred within the first month of employers' noncompliance.

**Figure 5. Noncomplying employers, by private sector industry, 1993-97**



Note: Four public sector agencies and 140 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 FY91-98. 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.

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 they are either no longer a subject employer or that they have arranged for workers' compensation coverage. With the increased penalties in SB369, this should become an even more attractive option.

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

Table 6. NCE claims charges, civil penalties and collections, FY91 - 98

	FY91	FY92	FY93	FY94	FY95	FY96	FY97	FY98
Claims costs	\$6,861,402	\$6,323,490	\$7,090,378	\$6,570,990	\$5,472,427	\$5,463,183	\$4,372,437	\$3,542,552
Amount collected	\$1,200,844	\$1,421,041	\$1,701,684	\$1,650,877	\$2,277,425	\$1,917,333	\$1,933,096	\$2,490,963
Final civil penalties	\$751,307	\$1,692,112	\$1,770,652	\$1,849,105	\$1,470,195	\$3,505,213	\$5,441,247	\$7,058,825
Penalty reductions	\$26,036	\$80,060	\$312,264	\$486,126	\$188,198	\$236,383	\$1,085,695	\$1,018,499
Penalty write-offs	\$11,534	\$0	\$277	\$0	\$119,793	\$187,649	\$838,724	\$699,644
Amount collected	\$251,822	\$574,830	\$661,593	\$606,863	\$608,471	\$653,876	\$905,569	\$1,042,460
# of final civil penalty orders					1,193	928	731	873
Ave. civil penalty amount					\$1,232	\$3,777	\$7,444	\$8,086

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 include amounts written off as part of compromise settlements.  
 The number of final orders are available only for FY95 - FY98.

Source: DCBS/IMD, from data provided by DCBS/BAD.

### 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 and 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 \$1,000 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 after the noncompliance order becomes final (ORS 656.735(2)).

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 \$1,000, 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, JCI, or other claim's agent, 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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