Waiting Periods and Direct Payments in Workers’ Compensation

(Prepared for the Royal Commission on Workers’ Compensation in British Columbia)

by

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1. **Introduction**

At the time of introduction of workers’ compensation in North America, waiting periods were a prominent design feature. This appears, fundamentally, to be due to the heavy influence of the first jurisdictions to adopt compensation programs for work injuries on the jurisdictions that followed. The North American workers’ compensation system was heavily influenced by the German system, established in 1884 under Bismarck, to which both workers and employers both contributed. In Britain, the “Friendly Societies” in the pre-1880, were initially established to compensate injured workers and their families for death or disability associated with a workplace injury, without regard to fault. Workers’ paid for the cost of the system, but over time, employers agreed, either through collective negotiations or on their own accord, to assist in financing the societies. Frequently, the *quid pro quo* was an agreement that workers’ would not sue the contributing employer. In the United States, a number of early attempts to legislate workers’ compensation statutes were beaten back by the U.S. Supreme Court, which found many of the provisions of the legislation offensive to common law doctrine, including the absence of waiting periods (as a form of co-insurance).

In his 1913 report that formed the basis of modern workers’ compensation statutes in Canada, Sir William Ralph Meredith outlined how, under the proposed law, the burden of work-related injuries would be divided between the employer and the worker, Meredith noted (page 15) that:

*The workman will bear (1) the loss of all of the wages for seven days if his disability does not last longer than that, (2) the pain and suffering consequent upon his injury, (3) his outlay for medical or surgical treatment, nursing and other necessaries, (4) the loss of 45 percent of his wages while the disability lasts; and if his injury results in his being maimed or disfigured he must go through life bearing that burden also, while all the employer will bear will be the payment of 55 per cent of the injured workman’s wages while the disability lasts.*
The waiting period was determined by Meredith to be essential as a cost or risk-sharing mechanism between workers and employers.

Waiting periods are akin to deductibles in insurance policies. They are a form of co-payment whereby the employee essentially self-finances the initial (time loss) costs of the injury. In that vein, they are consistent with the principle of insurance — that is, designed to protect against large and not small losses. Deductibles in insurance policies are designed to reduce the moral hazard problem where the incentive to take precautions is reduced, or propensity to claim benefits increased, as one’s losses become more fully insured. In essence, it is cost-effective to co-insure by having the potential claimant bear the costs of small claims rather than to share, say on an 80-20 basis, all of the costs. The cost-effectiveness of deductibles in the general insurance industry is exhibited by the fact that policies are substantially cheaper when there is a large deductible. Conversely, they are considerably more expensive when there is no deductible and the party is fully insured, since the moral hazard problem is of greatest concern under these circumstances.

A concept that is related to the waiting period is that of direct payment (by employers) of workers’ compensation indemnity benefits for some time-limited period immediately following the date of injury. It is useful, however, to distinguish the concept of a waiting period, which implies that workers do not receive indemnity benefits for the duration of this period, from that of a “direct payment” scheme, in which the employer is responsible for paying the worker benefits directly for some specified period of time (rather than the benefits being paid by the workers’ compensation board). The notions of a waiting periods and direct payment are often used
interchangeably, but they should not be. It is possible to imagine a workers’ compensation system that includes among it’s design characteristics both a waiting period and direct payment. While direct payment in workers’ compensation is a relatively rare phenomenon, it has made an appearance recently as a serious proposal for reform.

The purpose of this report is to explore the concepts of waiting periods and direct payment periods in workers’ compensation and to review the literature on the impact that waiting periods have had on the frequency and costs of workers’ compensation claims. The report is divided into five more parts. In section II, we list and describe some of the rationales and objectives for waiting periods and direct payments. In section III we examine some of the central issues in the design of waiting periods/direct payment, and outline the relationship between these design features and the objectives. We summarize, in section IV, the key design features of waiting periods in North American workers’ compensation jurisdictions, and outline a recent proposal for a direct payment scheme. Section V reviews and summarizes research findings on the impacts of waiting periods on claims frequency and costs. Summary comments conclude the report.

II. Rationales/Objectives for Waiting Periods

A “waiting period” in the context of workers’ compensation, general refers to the period of time between the date of a workplace injury and the date on which the worker begins to receive benefits from the workers’ compensation insurer. A “direct payment period” is the period of time for which the employer, as opposed to the workers’ compensation insurer, is responsible for the
payment of benefits. These simple operational definitions, however, belie a number of design complexities which ultimately reflect the philosophical rationale for the waiting/direct payment period.

Waiting periods and direct payment periods can be thought of as having two main rationales — the reduction of claims filing (either through reducing moral hazard or by promoting investments by the firm in safety) and/or the shifting of costs from the workers’ compensation system to the workplace parties more directly. These two objectives can be interrelated if the shifting of costs to the workplace parties induces the behaviors that result in a reduction in claims filing.

**Reduce moral hazard**

A common rationale for waiting periods is that they reduce the potential moral hazard implicit in workers’ compensation. That is, the availability of benefits may induce workers to report claims that they would not have reported in the absence of the availability of benefits. In the presence of a waiting period, it is frequently argued that workers will be less likely to report injuries that are relatively minor. The other side of the coin, however, is that workers who suffer a relatively minor injury, but who face a financial penalty if they report the injury, may not take time away from work to recover or even seek proper medical care. The result can be that the injury will become aggravated, or the damage become cumulative, and result in a future absence that is much more deleterious to the worker, and costly to the workers’ compensation system and the employer. An injured worker who remains on the job also may also put fellow workers, the
public and property at risk. As in all design features of the workers’ compensation system the goal must be to ensure optimal reporting of injuries, which does not imply no reporting of seemingly relatively minor injuries.

An important point raised by Krueger (1990) is that (page 92) “Since most firms provide at least partial ‘sick’ pay to employees during the waiting period, the waiting period is unlikely to serve as an important deductible for many workers...... In addition, administrative data from the State of Minnesota, which has a three-day waiting period, indicate that 29.3 percent of workers’ compensation recipients leave the program within 7 days.”

More generous workers’ compensation benefits, including shorter waiting periods, may increase the likelihood that a claim will be made by a worker because the financial burden from taking time of work to recover is not as great, but more generous benefits may also increase the likelihood of a fuller recovery, and a lower incidence of re-injury.

“Self-insuring” as a financial incentive for promoting safety

One of the more frequently cited rationales for direct payment periods is the incentive they may provide for employers to make the workplace safer. The notion is that employers who are required to pay benefits directly to workers for the duration of the waiting period are, in effect, 100 percent experience-rated. In theory, this increases the direct cost of all lost-time accidents to the employer, thereby creating a financial incentive for the employer to reduce the frequency and severity of injuries in the workplace. The longer the period of time for which the employer is responsible for paying benefits, greater the financial incentive. In the extreme, a direct payment period of infinite duration would be the equivalent of employer self-insurance.
There are important considerations with respect to the safety inducing potential of direct payment periods. It is unclear as to the extent to which experience rating improves safety as opposed to reducing the reporting of claims. Hyatt and Thomason (1998) found evidence that the Experience Rated Assessments program in B.C. is associated with a reduction in the frequency of short-term disability claims, as well as an increased likelihood that employers will adopt claims management practices. It should be noted that any employer behaviour-modifying impact of direct payments pre-supposes that current experience rating mechanisms are incomplete. Otherwise, a workers’ compensation system that provided for perfect experience rating for short-term disability benefits would create the same incentives. It should be noted that waiting periods, when not combined with a direct payment requirement, reduce any experience rating effect.

**Reduce administrative costs**

Waiting periods can be used as a mechanism to reduce the costs of administering the workers’ compensation system, since the primary adjudication of the claim for the purpose of determining indemnity benefits is precluded for work absences that do not extend beyond the waiting period. For example, a jurisdiction with a waiting period of three days may require that the injury be reported to the workers’ compensation immediately to ensure that proper medical rehabilitation resources are provided to the worker, but not require application for indemnity benefits until the fourth day of absence from work. As a result, the costs of primary and secondary adjudication at the board are avoided for claims for work injuries resulting in short duration absences. Further, the costs to the employer of complying with claims reporting and
information filing procedures may also be reduced by waiting periods if employers were only required to file reports for those workers whose injuries result in absence from work beyond the waiting period.

There are a number of issues that may limit the utility of waiting periods as mechanism for reducing the administrative costs of the workers’ compensation system. First, it may be preferable and indeed necessary for claims to be filed even for injuries that result in short-term absences from work since filing a notice of injury may be important for ensuring that the workers’ rights are protected. In addition, unless the medical costs of injuries that last for less than the waiting period are not paid by the workers’ compensation system (as they are now), then injuries would still have to be reported to the board in order to invoke appropriate medical cost apportionment, unless the board is prepared to forfeit the role of determining the medical cost payer to the provincial health plan administrators.

It would appear that while there may be some administrative savings available through the implementation of waiting periods, these are likely to be modest since a substantial amount of paperwork may still be required at the time of the injury and that the burden of claims administration, and its associated cost, is simply shifted away from the workers’ compensation system.

**Reduce benefit costs**

Waiting periods and direct payments have the potential to reduce benefit costs to the workers’ compensation system, independent of their influence on promoting real reductions in the frequency of claims, since the system does not pay the costs of benefits during the relevant period.
Clearly, the extent of the potential savings will be influenced largely by the duration of the waiting and/or direct payment period, and the retroactivity provisions (discussed subsequently).

It is important to recognize, however, that direct payments and waiting periods will not necessarily reduce the costs of workplace accidents. These costs may fall more directly on the employer or a third-party insurer since the benefits during the direct payment period are financed through some form of short-term disability program. Importantly, the costs of the waiting period may fall directly on the injured worker. This is especially true in jurisdictions, such as Nova Scotia, where the worker is not entitled to receive benefits or remuneration of any kind, from any source during the waiting period.

Further, some jurisdictions provide that if the duration of absence from work extends beyond some “milestone” period of time, then the benefits foregone during the waiting period will be retroactively paid to the worker (known as the retroactive period). Under such a system, an incentive is created for the worker to extend their absence beyond the milestone duration of absence, in order to recover the financial loss incurred during the waiting period.

Cost sharing between injured workers and employers

A waiting period can be thought of as a “deductible”, frequently encountered in automobile insurance policies, or a “co-payment” akin to those found in private health and dental insurance plans.

While the cost of workers’ compensation is thought of, at least in the first instance, as being paid by employers, the introduction of waiting periods can, depending on the specific design
features, provide a route for reapportioning costs between workers and employers. Costs will fall more directly on workers if the workers’ compensation statute does not require employers to pay workers their lost wages (or workers’ compensation benefit equivalent) during the waiting period. In addition, workers may also pay indirectly if the lost wages are covered by a short-term disability plan, “sick days”, or vacation days, since the worker must forego the portion of these benefits consumed by their work injury.

**Continuation of Income**

Direct payment periods, particularly in the absence of a waiting period, can help to ensure that injured worker’s incomes are not disrupted while the workers’ compensation board adjudicates the claim. Responsibility for the initial payment of benefits would fall on the employer. Such a direct payment scheme could be designed so that the workers’ compensation board reimburses the employer for all or part of the payments made to the worker. As we indicate below, this approach has been implemented in Quebec. As we also note below, an important issue under this scheme, or any direct payment requirement, is that the initial determination for benefit eligibility is also made by the employer and not the workers’ compensation board.
Greater reliance on the workplace parties for workers’ compensation

Though not necessarily an end in itself, but rather as a means to achieving the objectives of improved safety and promoting return to work, a rationale for waiting periods and/or direct payments is increased self-reliance of the parties in the delivery of workers’ compensation. This was a theme expressed in a recent ministerial review of workers’ compensation in Ontario, prior to the drafting of amended legislation. The “problems” caused by the exclusive reliance of the workplace parties on the workers’ compensation system to address indemnity for work-related injuries and diseases was expressed in that report as follows:

The current system encourages dependency on the WCB and demands little of the workplace parties in the post-injury process. To set the process in motion, a workplace accident must be reported by the worker to the employer and by the employer to the WCB. Once the process is in motion, return to work and rehabilitation initiatives are generally driven not by the parties but by the WCB. The relative passivity of the workplace parties and corresponding over-reliance on the system are not compatible with the objectives of accident prevention and early return to work.

Not only does the system fail to encourage the workplace parties to assume greater responsibility for an injury, in too many cases it encourages the worker to focus on establishing and maintaining a claim rather than recovering and returning to employment. At the same time, the system encourages the employer to focus on avoiding or transferring costs instead of getting the worker back to work quickly. The consequence of this behaviour is that too many workers stay in the system for too long, to their and society’s detriment.

Jackson Report, June 1997 (page 9)

As a postlogue, it should be noted that Ontario did not enact either a waiting period or direct payment period in its most recent legislative reforms.
III. Issues in the Design of Waiting Periods

Assuming that policy makers feel strongly that there is sufficient rationale for a waiting period and/or direct payment, a number of design features must be confronted. The specific design which can be manipulated in pursuit of various policy objectives. In this section, key design elements are introduced in the context of a series of questions: which workers and firms should be subject to waiting periods/direct payment?; which benefits should be subject to waiting periods/direct payment?; what should be the duration of the waiting/direct payment period?; should benefits withheld during the waiting period be retroactive?; should claims which do not extend beyond the waiting/direct payment period be reported to the WCB?; how will direct payment of benefits be enforced?; and, is there a role for supplementary insurers? A number of the considerations upon which policy makers must reflect in order to develop responses to these questions are also presented. Clearly, the responses to each of the questions will depend on the policy objectives to be pursued.

Which workers and firms should be subject to waiting periods/direct payment?
While there are advantages of administrative ease and the appearance of consistent application of the law associated with a uniform application of waiting periods, there may be circumstances for which exceptions might be considered. One such exception might arise in instances where workers have been excluded from protections under health and safety laws. For example, firefighters and police are often denied the right to refuse unsafe work, or face a much more stringent test of the reasonableness of a refusal than would other workers. Where this right to
protect oneself from imminent harm is precluded, it may be reasonable to waive the waiting period for these workers.

Exemptions from the waiting period may also be considered for industries and occupations that may be inherently more risky than others, but are considered to be essential to social, economic or other security of the jurisdiction. An obvious challenge for policy makers is defining the criteria for establishing which industries and occupations warrant exemption.

A key issue in implementing a direct payment policy is whether or not the policy should apply to small employers. Since direct payment is akin to self-insurance for the duration of the direct payment period, many of the same sorts of concerns about small employers emerge as those in the experience rating debate. These include the potential for a single workers’ compensation claim to threaten the continued existence of the firm, and the limited opportunities for providing modified work in small firms to reduce the indemnity benefit costs to the employer. Further, in the debate over the efficacy of experience rating, one area of approximate agreement is that experience rating is least likely to be effective in inducing prevention activities within very small firms. The possibility also exists that small employers, and perhaps large employers, will respond to the direct payment requirement by attempting to pass some of the costs to the injured worker by requiring the worker to use “sick days” or vacation days to help finance the injury-related absence. Clearly, the importance of these concerns increases with the length of the direct payment period since the direct costs of indemnity benefits to the employer increase in tandem with the direct payment period.
Which benefits should be subject to waiting periods/direct payment?

Stated differently, for what types of benefits might injured workers/employers be exempted from waiting period/direct payment requirements? Where waiting periods exist in the U.S., it is universally the case that the waiting period applies to temporary total disability benefits. However, a few jurisdictions exempt other types of benefits from waiting periods. For example, as noted in more detail below, some U.S. jurisdictions exempt serious injuries (such as amputations) and fatalities from the waiting period. A more general policy might be to exempt those claims that are likely to result in permanent disability awards from the waiting period/direct payment provisions.

What should be the duration of the waiting period and/or direct payment period?

The duration of the waiting period/direct payment period is obviously a critical parameter for pursuing whatever objective the waiting/direct payment period is expected to achieve. A longer waiting period would be consistent with: reducing the direct costs of administration and indemnity benefits to the workers compensation system; creating a financial incentive for workers not to report (minor) injuries and/or return to work sooner; and, increasing the share of the costs of workplace injuries and illnesses that falls upon workers as a form of co-insurance.

However, the costs of longer waiting periods, let alone waiting periods themselves, are most likely to fall on the worker (as will be described below, two Canadian jurisdictions ensure that the costs of the waiting period fall on injured workers). Many observers of workers’ compensation, as well as injured workers themselves, see the existence of a waiting period and every day of the waiting period as a “punishment” for being injured on the job. A foundation for
the establishment of workers’ compensation was to protect injured workers and their families from impoverishment. Clearly, these is a careful balance which policy makers must consider before increasing the duration of a waiting period.

For perspective on the potential reduction in claims paid by the WCB as a result of a waiting/direct payment period, it is useful to consider the following analysis from the 1994 cohort data compiled by the Royal Commission, on the duration of 81,271 claims that received at least one day of wage loss benefits:

<table>
<thead>
<tr>
<th>Days of Wage Loss</th>
<th>No. Of Claims</th>
<th>Percent of Claims</th>
</tr>
</thead>
<tbody>
<tr>
<td>1-3</td>
<td>20,766</td>
<td>25.6</td>
</tr>
<tr>
<td>4-7</td>
<td>14,909</td>
<td>18.3</td>
</tr>
<tr>
<td>8-14</td>
<td>12,337</td>
<td>15.2</td>
</tr>
<tr>
<td>15-21</td>
<td>6,245</td>
<td>7.9</td>
</tr>
<tr>
<td>22-30</td>
<td>5,182</td>
<td>6.4</td>
</tr>
<tr>
<td>31 or more</td>
<td>21,832</td>
<td>26.9</td>
</tr>
</tbody>
</table>

Should benefits withheld during the waiting period be retroactive?

Waiting periods are sometimes accompanied with a retroactivity provision, in which the worker receives the benefits foregone during the waiting period if the absence from work extends beyond some specified period of time. As indicated above, some workers’ compensation jurisdictions in the U.S. exempt certain types of (severe) injuries and indemnity payments from waiting periods. Similarly, a rational for retroactivity is that it provides a mechanism for reducing the impact of the waiting period on workers who have suffered an injury that results in an extended absence from work.

The existence of retroactivity of benefits foregone during the waiting period in workers’
compensation represents a significant departure from other kinds of insurance. If one thinks of waiting periods as akin to a deductible in an auto insurance policy, then it is noteworthy that these deductibles are not retroactive. That is, if there is a $500 deductible, and the loss is $1,000, the insurance company does not compensate for the full loss simply because the claim is beyond the deductible. If it did, then a perverse incentive would be created for the claimant to try to convert, say, a $400 claim to a $500 claim in order to receive an indemnity payment of $500 instead of zero. In this regard, retroactivity is questionable. It can create a perverse incentive to convert short claims to longer ones.

**Should claims which do not extend beyond the waiting period/direct payment period be reported to the WCB?**

Reporting work injuries to the workers’ compensation board is critical for ensuring that an injured workers’ rights to appropriate medical and vocational rehabilitation and indemnity benefits is protected. Full reporting of workplace accidents also provides information on accident trends that is an important, though by no means comprehensive, gauge of the state of workplace safety and health. In the absence of a waiting period or direct pay period, all workplace injuries and illnesses are (supposed to be) reported to the board. In the presence of waiting/direct payment periods, work injuries would presumably still be reported, as long a the workers’ compensation system is required to pay the costs of medical care from the date of injury.

In addition to reporting the occurrence of an injury, employers may be required to provide information on the disposition of the claim. For example, if the worker returns to work during the waiting period or the direct payment period, employers could be required to provide information on the duration of the absence and the amount of indemnity benefits paid to the worker.
How will direct payment of benefits be enforced?

Delays in the payment of cash benefits to injured workers can obviously cause financial crisis for the injured workers and their families. Under direct payment systems, the determination of eligibility for benefits, and the period of time over which the benefits are paid, rests largely with the employer, and not a workers’ compensation board adjudicator. Because of the imbalance of power between workers and employers inherent in this situation, and the incentive for employers to determine benefit eligibility in a way that favors the employer, it may be necessary under a direct payment scheme to provide a mechanism which provides injured workers with timely access to a dispute resolution procedure, overseen by the workers’ compensation board. To the extent that the determination of benefit eligibility results in disputes that must be resolved through this administrative mechanism, the potential administrative cost savings of a direct payment system are reduced as the board re-assumes the role of claims adjudication.

Is there a role for supplementary insurers?

One possible approach to the implementation of both waiting periods and direct payment schemes is to allow the worker to insure for the waiting period, and the employer to insure for the direct payment period, through either or both of private and public supplementary insurance providers. To some observers, this permits a “foot in the door” for private insurers into workers’ compensation, and as such is undesirable because the profit motive of private insurers will result in reduced benefits for injured workers.

A live question is whether markets for either waiting period insurance or direct payment period insurance would arise. The usual insurance problems of adverse selection (only those
workers and firms who are most likely to receive benefits from such insurance would purchase it) and moral hazard (the availability of benefits will induce behaviors in workers and firms that will result in increased claims filing) would inhibit the development of the supply side of these markets. Indeed, it is often the perception that these problems are significant which causes policy makers to adopt waiting periods and direct payment policies in the first place. Even if markets did arise, it is an open question as to whether these markets could provide coverage more efficiently and cheaper than the workers’ compensation board.

IV. Waiting Periods in Canadian and U.S. Workers’ Compensation Programs

Waiting periods are ubiquitous in the 50 United States and Washington, D.C. Waiting periods of three days are present in 23 U.S. jurisdictions, four to six days (typically five) in 6 jurisdictions and seven days in 22 jurisdictions. In addition, most U.S. jurisdictions specify “retroactive periods.” If the absence from work due to an injury extends beyond the retroactive period, the injured worker retroactively receives benefits back to the date of injury.

To see the effect of waiting periods and retroactive periods on benefits, consider the following example. The state of Florida has a waiting period of seven days and a retroactive period of fourteen days. If a worker experienced an injury that caused them to be away from one to 7 days following the injury, the worker would not be eligible for any indemnity benefits from the workers’ compensation system (they would, however, be immediately eligible for medical benefits). If the workers’ absence extended beyond the waiting period, but for less than 15 days, the worker would receive benefits for the number of days based on the formula (days since
accident minus 7). For absences beyond the retroactive period, the worker would be compensated for all of the days following the injury, but would receive the first seven days of benefits retroactively after day 14.

Retroactive periods vary considerable across states, ranging from no retroactive period to six weeks. For those 23 jurisdictions with three-day waiting periods, the most common retroactive periods are: two weeks (10 jurisdictions); one week (5 jurisdictions); no retroactive period (3 jurisdictions); ten days (2 jurisdictions); three weeks (1 jurisdiction); and four weeks (1 jurisdiction).

In those jurisdictions with seven day waiting periods, the most to least common retroactive periods are (number of jurisdictions in brackets): two weeks (11); three weeks (5); four weeks (2); six weeks (2); one week (1) and eight days (1). Of the six jurisdictions with waiting periods between four and six days, 2 have no retroactive periods, 2 have retroactive periods of two weeks, while the remaining two jurisdictions have retroactive periods of one week and three weeks.

In addition to specifying the duration of waiting and retroactive periods, some jurisdictions have made some adjustments to exclude some types of indemnity payments from waiting period requirements. For example, in Illinois and South Dakota, waiting periods are relevant only for temporary total benefits. In Iowa, there is no waiting period for permanent partial disability benefits. In California and Idaho, the waiting period is waived if a worker’s injuries result in hospitalization, while in Delaware, hospitalization or amputation results in the benefit period being waived. One jurisdiction, Maine, exempts firefighters from the waiting period.

Most Canadian jurisdictions have had waiting periods at some point in time since 1960, the exceptions being Alberta, Manitoba and Saskatchewan (the Northwest Territories and Yukon
have not had waiting periods since their inception in 1976). Subsequently, most jurisdictions eliminated their waiting periods, and other jurisdictions have eliminated, then reinstated waiting periods.

As of January 1, 1997, only two jurisdictions in Canada — New Brunswick and Nova Scotia — had waiting periods, not including the day of the accident. New Brunswick requires workers to wait for three working days following the date of injury before benefits are paid. (More formally, the waiting period is three-fifths of the workers regular work week to account for the fact that some workers do not work a standard five day week. The policy is therefore designed to cause the worker to forego a full 3/5 of their average weekly wage.) The worker cannot receive any work-related remuneration during the waiting period (i.e., wages, supplementary pay, vacation pay, sick day pay, etc.). Benefits will not be paid as long as the worker is in receipt of work-related remuneration. The retroactive period in New Brunswick is thirty working days.

Nova Scotia requires a 2 day waiting period (or 2/5 of the workers’ average weekly wage). As in New Brunswick, the worker cannot receive any work-related remuneration during the waiting period, although this restriction is not in force where an existing collective agreement provides for such remuneration in the event of a work-related injury. Nova Scotia’s retroactive period is five calendar weeks.
In Alberta, Ontario, Quebec and Newfoundland, employers are required to pay the worker their normal pay on the day of the accident. Quebec has the further requirement that the employer must pay the worker 90 percent of their net income for the first fourteen days following the date of injury. The employer is subsequently reimbursed for these payments by the Quebec workers’ compensation authority.

In a recent report by the Minister Without Portfolio Responsible for Workers’ Compensation in Ontario, the central design features of an illustrative direct payment system were proposed. These included:

*The injured worker applies to the employer for compensation benefits to cover lost time from work.*

*The employer pays the benefits at the level required by the Act, unless the employer decides, on reasonable grounds, that compensation should not be paid. Any disagreement over compensation is immediately submitted to a WCB-sponsored mediation process; unresolved disputes are determined by the WCB on a fast-track basis.*

*Significant sanctions would be put in place to ensure that employers comply with the requirement to pay upon application for compensation.*

*Where an employer fails to comply with the direct payment obligation, the WCB would pay the worker directly and recover the amount from the employer.*

*Where the benefits are paid to the worker in error, the WCB would reimburse the employer and recover the monies from the worker.*

*Claims arising from death, occupational disease or extremely serious injuries are handled by the WCB from the outset; claims involving medical treatment only and no lost time from work are dealt with as at present.*
The employer is obligated to pay claims up to the end of the direct payment period and would have the option of purchasing insurance for this period.

All claims must be filed with the WCB by the employer, as at present.

Claims that exceed the direct payment period revert to the WCB for further handling.

V. U.S. and Canadian Evidence of the Impact of Waiting Periods on Claims Frequency and Costs

A modest body of literature has addressed the impacts (reporting frequencies and claims costs) of waiting periods. These studies are summarized briefly in Table 1. In all of the studies, the key focus was generally not waiting periods, but rather the impacts of workers’ compensation indemnity benefits, labour market income, experience rating or other factors, on claims rates and costs. That is, waiting periods were included in the analysis as a feature of the workers’ compensation system to be “controlled for” in the analysis, but was not the focus of the study.

Krueger (1990) used data on 19,082 workers age 8 to 65 from the United States Current Population Survey (CPS), a monthly survey of the American population akin to the Canadian Labour Force Survey, to examine determinants of workers’ compensation claims over the period 1983 to 1985. Krueger found that the, other factors constant, workers who face longer waiting periods for workers’ compensation benefits will be less likely to make a claim. As an example of the magnitude of the impact, Krueger calculated that increasing the waiting period from 3 to 7 days would result in a reduction in the rate of workers’ compensation benefit recipiency of 38.7 percent. However, as the author notes (page 92), “(t)his result may represent a behavioral response to workers of a larger “deductible” or a non-behavioral truncation of disabilities that do not persist beyond the waiting period.” His data and research design could not distinguish whether
either or both of the behavioral response or the non-behavioral truncation is responsible for his results, although circumstantial evidence that he cites suggests that much of the effect is likely to be due the elimination (truncation) of short-term disabilities from eligibility for workers’ compensation benefits.

Also included in Krueger’s analysis is a variable which measure the length of the retroactive period. After the retroactive period, workers receive benefits for the waiting period. For example, a jurisdiction may have a waiting period of three days and a retroactive period of 30 days. That is, the worker does not receive benefits from the workers’ compensation system for the first three days away from work, but does receive those three days of benefits if the duration of their absence from work extends beyond 30 days. The retroactive period was found to be statistically insignificant and it’s impact of receipt of workers’ compensation benefits very small in magnitude. Given the waiting period and retroactive period results, Krueger drew the following conclusions (pages 96-96):

This suggests that an efficient way to insure workers against possible catastrophic economic losses that follow severe, unanticipated work related disabilities would be to require a relatively long waiting period. The waiting period in every state is currently seven days or less. Extending the waiting period for indemnity benefits to fourteen days would eliminate a great number of claims that entail relatively minor economic losses, but would not deter workers with major disabilities and catastrophic economic losses from receiving benefits. Moreover, if in some cases disabilities of short duration are determined to cause economic hardship, the program could be amended to provide short-term, low-interest loans to these individuals until they return to work.

It should be stressed, however, that no evidence has been presented suggesting that the provision of medical benefits and rehabilitation services should be postponed for any length of time after the onset of disability. To the contrary, medical care and rehabilitation services should probably be provided as soon as possible to workers injured on the job because delay in providing these benefits may aggravate a worker’s disability and reduce his motivation to return to work.
Priorities in the current workers' compensation insurance system are often reversed. Indemnity benefits are paid out after a short waiting period, while bureaucratic procedures and mistakes often delay reimbursement for medical care and rehabilitation services for months.

In his study, which focused largely on the impact of experience rating on workers’ compensation claims frequency rates, Ruser (1985) estimated a number of equations that included as an independent variable the proportion of lost workdays per injury that are compensable under workers compensation. As waiting periods increase, holding other factors constant, the proportion of lost workdays covered by workers’ compensation falls, while a reduction in the waiting period increase the proportion of workers’ compensation-covered lost-time. His data set contained 3,243 observations from 25 manufacturing industries from a maximum of 41 states over the years 1972 to 1979. His analysis considered two dependent variables — the frequency of all injuries (claims) per 100 worker years, and the frequency of lost-workday injuries per 100 worker years. In addition to ordinary least squares (OLS) regression analysis, Ruser also presented results using a generalized least squares (GLS) approach in order to address the statistical problem that the claim frequency rates are based on vastly different numbers of hours of exposure to injuries.

Beginning with results for the frequency rate of all injuries, Ruser’s findings varied dramatically depending upon whether or not state dummy variables were included the estimating equation. Where state dummies were not included, Ruser’s results suggest that an increase in the length of the waiting period is associated with a statistically significant decrease in the frequency of all accidents. However, in regressions were state dummy variables were included, longer waiting periods were associated with a higher total claims frequency, although this result was never statistically significant at traditional significance levels.
Based on the results which included the state dummy variables, Ruser calculated that a reduction in the waiting period from 7 to 3 days, holding the retroactive period at 28 days, would increase the frequency of ll claims by 1.09 per 100 workers (this represents 7.3 percent of the mean rate in Ruser’s sample of 14.86 injuries per 100 workers years). A similar calculation based on the regression results which did not contain the state dummies points to a decrease of 0.37 claims per 100 worker years (or 2.5 percent of the sample mean).

Lost-time injury frequency rates were found to be negatively associated with the duration of waiting periods. That is, the longer the waiting period, the higher will be the lost-time injury frequency rate, other factor held constant. This result was statistically significant only in those regressions that included the state dummy variables.

This mixed bag of results is likely due to the high degree of collinearity between the state dummy variables and the variable that takes into account the waiting period. Thus, it is not possible to be confident that Ruser is able to measure the independent impact of the waiting period on claims frequency rates.

Chelius produced a trilogy of papers over the 1974 to 1983 period that incidentally included an examination of the impact of waiting periods on measures of injury frequencies and durations, although waiting periods were not the focus of any of the studies. In an early study, Chelius (1974) examined the relationships between characteristics of industries, workers and workers’ compensation systems on injury frequencies. Using data for 1967 from 2,627 firms in 13 states, Chelius found no effect of waiting periods on injury rates.

Chelius (1982) used data from two-digit manufacturing industries in 36 states over the period 1972 to 1978, to estimate total injury frequency rate (injuries per 100 workers), lost days
per case and total lost workdays (frequency multiplied by lost days per case) equations. He found that shorter waiting periods are associated with larger numbers of total lost workdays. The impact of lost workdays comes largely from an increase in the frequency of claims associated with shorter waiting periods. He found no statistically significant relationship between waiting periods and the number of lost days per claim.

Using an approach similar to that of his 1982 paper, but a different data set, Chelius (1983) found no impact of waiting periods on either of total lost days, injury frequency, or the average per claim duration of absence. He offered no explanation for the different results between his two studies. The 1983 paper used data on manufacturing industries from only 28 states, but the data covered a longer time period, spanning 1972 to 1978. The most that can be said is that Chelius’ earlier results do not appear to be robust across the two data sets.

Butler and Worrall (1983) also examined the impact of waiting periods with a sample of manufacturing firms, but from 35 states over the 1972 to 1978 period. The found that waiting periods are associated with statistically significant lower rates of temporary total and minor permanent partial disability claims, but not major permanent partial disability claims. More specifically, a 10 percent increase in the length of the waiting period was associated with a 3.3 percent reduction in the frequency of temporary total claims, and a 1.7 percent reduction in minor permanent partial disability claims. An increase from a three day waiting period to seven day waiting period, an increase of 133 percent, would be expected to induce a 44 percent reduction in temporary total disability claims and a 23 percent reduction in minor partial disability claims.

Butler (1994) is one of the few studies to look at the impact of waiting periods on claims costs and well as claims frequency. He found that waiting periods were associated with reduced
frequency of claims and reduced total cost of claims, but that per claim costs did not vary by the length of the waiting period.

The only Canadian study of which we are aware that looks at the impact of waiting periods on claims frequencies and costs is Thomason and Hyatt (1997). They cobbled together data from a number of sources on workers’ compensation claims frequencies and costs in all Canadian jurisdictions over the period 1961-1993. They found that each one day increase in the waiting period was associated with about a 3.5 percent reduction in the total claims rate. When they disaggregated their analysis by types of claims, they found that a one day increase in the waiting period was, depending upon the specification of the model, associated with between a 2.5 and 4.9 percent reduction in the accepted claims rate and a 5.2 to 8.2 percent reduction in the lost-time claims rate. They found no statistically significant association between waiting periods and the medical only claims rate.

With respect to claims costs, Thomason and Hyatt found that the average cost of a workers compensation claim increases by up to 6.5 percent, and that total claims costs increased by as much as 4.3 percent with every one day increase in the waiting period. The latter result was contrary to Butler’s findings for the United States.

Taken together with the result that waiting periods are associated with lower claims rates, the evidence from the Thomason and Hyatt study suggests that: (1) “...a longer waiting period has it’s greatest impact on the incidence of marginal or short-term disability claims, thus reducing the claims rate, but increasing the average severity (cost) of a claim” (page 247); (2) “(i)t is possible that a longer waiting period induces claimants to prolong relatively minor injuries so that they will become eligible for compensation benefits” (page 247); and, (3) the “cost savings”
associated with waiting periods due to reductions in claims frequency may be more than offset by increases in the average costs of the remaining compensation claims, especially where waiting periods are relatively short.¹

VI. Summary Comments

Waiting periods can impact on workers’ compensation claims and injury rates through a variety of mechanisms. In an accounting sense they obviously reduce the duration of the compensation period in claims to the extent that compensation is not forthcoming in the waiting period. This essentially involves a cost shifting from the workers’ compensation system to the injured worker. They may also reduce the number of claims since claims that are shorter than the waiting period would not be submitted. Even some claims that are slightly longer than the waiting period may not be submitted, if the transactions costs of doing so are not worth the benefits that accrue only after the waiting period. Again, however, these costs savings essentially involve cost shifting since the costs are essentially shifted to injured workers.

The main real saving in this regard would come from the saving in the administrative costs of processing short claims that now are not submitted because of the waiting period. Since the administrative, processing costs are somewhat fixed per claim, then this can involve a substantial saving. The administrative costs can otherwise fall on the agency, the worker and the employer.

¹One Possible explanation for this different results between Canada and the United States is that waiting periods have typically been longer in the United States than in Canada, and as a result there is a much more severe economic penalty to the injured worker of extending a work absence to qualify for benefits in the United States.
It is easy to imagine those total administrative costs amounting to one person-day, in which case it would take a person day of time to transfer one day of workers' compensation benefits to a worker who has only a one day claim.

In theory, the waiting period could also have an impact on real injury rates by influencing the incentives of the parties to take precautions against risk. To the extent that a longer waiting period reduces the monetary benefits associated with the injury period, then it would increase the costs of accidents faced by a worker. In such circumstances, they may have a reduced incentive to take precautions against the risk of such accidents. In practice, however, it is doubtful that small changes in waiting periods would have any substantial effect.

While longer waiting periods can generally be expected to reduce the incidence, duration and costs of claims, and possibly real injury rates, they could also have a perverse effect. They could create an incentive for injured workers to convert what otherwise would have been a short-duration claim into a long-duration one that will exceed the waiting period. This perverse incentive is especially strong if retroactivity is allowed since the recipient could claim benefits for the full period provided they were just over the waiting period.

Finally, it is important to bear in mind that waiting periods and direct payment periods do not reduce the costs of workplace accidents, unless these policies induce behaviors in employers and workers that cause a real reductions in the number of injuries and illnesses, or a reduction in frivolous claims that would otherwise have escaped to notice of workers’ compensation board adjudicators. If real costs are not being reduced, then waiting periods and direct payment are simply means for shifting costs away from the workers’ compensation system and on to workers, employers or both. They may also create new costs in order to ensure the effective operation and enforcement of the waiting/direct payment periods.
References


TABLE 1

IMPACT OF WAITING PERIODS ON VARIOUS OUTCOMES

<table>
<thead>
<tr>
<th>Study (year)</th>
<th>Data</th>
<th>Methodology</th>
<th>Outcome</th>
<th>Results</th>
</tr>
</thead>
<tbody>
<tr>
<td>Chelius (1982)</td>
<td>36 US states, mfg., 1972-75</td>
<td>Regression</td>
<td>Total lost days,</td>
<td>Increase, Decrease, No effect</td>
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<tr>
<td></td>
<td></td>
<td></td>
<td>Injury rate,</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Duration</td>
<td></td>
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<tr>
<td>Chelius (1983)</td>
<td>28 US states, mfg., 1972-78</td>
<td>Regression</td>
<td>Injury rate,</td>
<td>No effect, No effect, No effect</td>
</tr>
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<td></td>
<td></td>
<td></td>
<td>Duration, Total</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>lost days</td>
<td></td>
</tr>
<tr>
<td>Butler &amp; Worrall (1983)</td>
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<td>Regression</td>
<td>Claim frequency</td>
<td>Usually increase</td>
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<td>Lost time rate</td>
<td>Decrease</td>
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<tr>
<td>Krueger (1990)</td>
<td>US individuals, CPS 1983-85</td>
<td>Regression</td>
<td>Probability of</td>
<td>Large decrease</td>
</tr>
<tr>
<td></td>
<td></td>
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<td>claim</td>
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</tr>
<tr>
<td>Thomason &amp; Hyatt (1997)</td>
<td>Canadian Provinces 1961-93</td>
<td>Regression</td>
<td>Claims rate, Cost per claim, Total costs</td>
<td>Decrease (usually), Increase, Increase</td>
</tr>
</tbody>
</table>