Comparative Review of Workers’ Compensation Systems in Select Jurisdictions

JURISDICTION: OREGON

ENVIRONMENT

Population Size 3,082,000 (1994)

Labour Force 1.4 million in workforce (1994)

Demographic and Economic Indicators

Oregon's leading industries are forest products, tourism, agriculture, construction, high technology and health services. In recent years economic growth has lead to greater diversification, with Oregon's economy becoming less dependent on the forest sector and forest products industry and more involved in high technology industries. Agriculture and tourism continue to be important parts of the economy.

Oregon's population has grown at a faster rate than the rest of the U.S.A., as people are attracted to Oregon's quality of life and low housing costs. Population, job and income growth has exceeded the national average for several years. However, despite this, Oregon's per capita personal income is below the national average.
GOVERNANCE & ADMINISTRATION

Nature of System

A compulsory workers' compensation program, administered by the state, with a competitive state fund.

Principles and Mandate

The mission of the Oregon Workers' Compensation Division is to "assure a fair, effective, and responsive workers' compensation system". This statement is reinforced and supported by the guiding philosophy of the competitive state fund, the SAIF Corporation, which is "the leading competitive force in the workers' compensation marketplace, providing economic advantage to Oregon through innovations in risk management services which contain costs while paying fair and consistent benefits".  

Access to Litigation

Oregon is an exclusive remedy jurisdiction. Employees have no right to sue employers for covered injuries.

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1 In the last 10 years Oregon has undertaken a series of reforms to its workers' compensation system. In 1987, the first major set of reforms was introduced in response to greatly increasing system costs (in 1987 Oregon had the third highest premium rates in the U.S., it paid out the second highest level of aggregate workers' compensation benefits per worker in the U.S., and it had the highest rate of claims in the U.S. and the rate was rising significantly faster than other states). The 1987 reforms included restrictions on the acceptability of stress claims, increased benefit levels for permanently disabled, limited vocational rehabilitation, limited the claims appeal process and introduced a medical peer review panel to resolve disputes, and increased penalties for safety violations while enhancing safety consultation services. Though these reforms were relatively successful in meeting the objective of controlling system costs and making the system more efficient and effective by a greater emphasis on prevention and health and safety, it was felt that the reforms did not go far enough, leading to a second wave of reform in 1987. The 1990 reforms introduced a further series of provisions to constrain costs while making the system more effective at meeting its workers' compensation goals. These reforms included strictly defined compensability of injury and disease, limited use of chiropractors, encouraged use of managed care organizations, overhauled litigation and appeals process, established a comprehensive return to work program, required employers with more than 10 employees to establish employee/management safety committees, established a extensive fraud program and further increased benefits for permanently disabled workers. The result is that premium rates have fallen dramatically, and total claims have declined. As well, work-related fatalities are at their lowest rate since 1943.

2 In 1995 Oregon passed legislation to reinforce that workers' compensation in Oregon is an exclusive remedy. This legislation was designed to nullify a decision of the Oregon Supreme Court that gave injured workers the right to file civil suits against their employers if the worker is denied workers' compensation benefits. (Anne B. Allen, Insurance Legislation 1995 Takes Its Turn, Risk Management, December 1995, page 52.)
Scope of System

Who is Covered?
In Oregon, workers' compensation coverage is mandatory for most employers except for certain specific exceptions. Exceptions from coverage include domestics, casual labour, interstate transportation, certain charitable or relief work, certain amateur athletes and officials, volunteer ski patrol and volunteers in the ACTION program, personnel under federal permits, owners and operators of certain motor vehicles, commissioned real estate agents, foster care providers and golf caddies in an established training program. Employers of these "excepted employees" can choose to obtain coverage for themselves and their employees.\(^3\)

In 1994 the workforce was 1.4 million of which 1.3 million or 90% were covered by workers' compensation.

What is Covered?
All injuries and diseases directly arising out of employment.

All occupational diseases are covered provided that it can be established by medical evidence, supported by objective findings, that work was the major contributing cause of the condition, illness or disease.

Self Insurance
Both individual and group self insurance is permitted. To qualify for self insurance an employer must demonstrate that they have the required staff expertise and qualifications, obtain excess workers' compensation coverage and establish and maintain a fund or deposit sufficient to meet their compensation claims.

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\(^3\) Employers who fail to obtain workers' compensation coverage are liable to penalties of up to $1,000 for a first violation or twice the amount of the premium evaded, whichever is greater, and to $250 per day for subsequent violations. As well, additional fines of up to $5,000 can be imposed based on the extent of injury and the employer is liable for payment of all claims and administrative costs.
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Organizational Framework
The Workers' Compensation Division of the Oregon Department of Consumer and Business Services (DCBS) is responsible for the administration, supervision, and enforcement of Oregon's workers' compensation laws. The goal of the Workers' Compensation Division is to ensure that employers provide coverage for workers, that injured workers receive the benefits they are entitled to, and that parties are provided with the resources and procedures for the fair resolution of disputes.

The Workers' Compensation Division and the Insurance Division of the DCBS are jointly responsible for the regulation and licensing of private insurers authorized to underwrite worker's compensation risk. The Worker's Compensation Division has sole authority for self insured employers.

The Workers' Compensation Division is funded by a premium assessment equal to 4.5% of the direct earned premium of insurers and the simulated earned premium of self-insured employers (equivalent to 0.2%).

An integral part of the workers' compensation system in Oregon is the SAIF Corporation. Created in 1913 by the state to be the "driving force" in workers' compensation in Oregon, SAIF is a self supporting, not-for-profit, publicly owned exclusive workers' compensation insurer. Employers in the state may insure their risks through private insurers, SAIF, or by self-insurance.

In 1996, SAIF had more than 36,000 policyholders and more than half of the Oregon employers required to carry workers' compensation coverage insure with SAIF. SAIF has 10 offices located throughout the state and employs 1,025 staff.
Governance Structure

The DCBS is a department of government with a director appointed by the Governor. Responsibility for the administration of workers' compensation is vested in a single administrator appointed by the Director of the DCBS with the approval of the Governor.

SAIF is governed by a five member Board of Directors appointed by the governor and confirmed by the Oregon Senate.

Policy Development

The Policy Unit in the Workers' Compensation Division provides policy direction and leadership for the division including rule making, budget development and execution, strategic plan implementation, policy analysis and legislation.

The Workers' Compensation Management-Labour Advisory Committee, a standing committee which is not formally part of the DCBS, is responsible for studying areas of workers' compensation law, at the suggestion of either the members or the Director of the DCBS, and reporting its recommendations to the Director or the legislature. The Board consists of 14 members, seven representatives of labour and seven employer representatives. The members are appointed by the governor with consent of the state senate for two year terms.

The Workers' Compensation Board, the independent appellate body that adjudicates disputes regarding worker's compensation claims (see Appeal Process), also furnishes policy advice on worker's compensation issues to the director of the DCBS.

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4 This standing committee grew out of the 1990 reform movement. It was an attempt to institutionalize the involvement of management and labour in system change. The Committee has had its ups and downs however. In considering amendments to enhance managed care provisions in the legislation (1995 amendments) the process broke down and both sides were unable to reach a consensus on recommendations to the legislature. (Duncan Ballantyne and James F. Dunleavy, *Workers' Compensation in Oregon: Administrative Inventory*, Workers Compensation Research Institute, December 1995. page 19.)
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Accountability

As a direct department of government, the Workers' Compensation Division of the DCBS, is accountable to and reports to government.

Financial audits of SAIF are conducted on an annual basis by the Secretary of State's office and every three years by the DCBS.

Performance Assessment

Oregon has been subject to two administrative inventories. In 1995, staff of the Worker's Compensation Research Institute undertook a broad administrative inventory of the Oregon system. In 1996, staff of the Institute completed a review of the impact of Oregon's medical cost containment reforms5.

Claims Adjudication Process

Claims adjudication is the responsibility of the insurer in accordance with any policies and procedures under the legislation and established by the Workers' Compensation Division, DCBS.

An employer must file a report of any fatality, claims with three or more lost workdays or if the worker is hospitalized, denied claims and claims with permanent disability with the Division. In addition to the employer's first report of injury, a closure request or report, a vocational status report and an insurer closure form must be filed with the Division.

The Workers' Compensation Ombudsman's Office, established in 1987 by statute is an independent advocate for Oregon's injured workers. The office assists injured workers' through the system including assisting with time-loss checks, expenses reimbursements, medical claim and authorizations, reopening claims and helping to negotiate and resolve disputed claims.

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**Dispute Resolution**

*Mediation/Conciliation*  
The Administrative Law Judges (ALJs) of the Worker's Compensation Board's Hearings Division provide alternative dispute resolution for worker's compensation matters.

*Appeals Process*  
There are two venues for appeal in Oregon.

The Dispute Resolution Section of the Workers' Compensation Division resolves disputes relating to the appropriateness of medical treatment, medical fee disputes and palliative care disputes; administers the mandatory reconsideration process involving disputes arising out of claim closures and disability awards, schedules medical examinations to resolve disputes over impairment findings and mediates disputes between workers and insurers over vocational assistance matters.

The Worker's Compensation Board, which is responsible for some appeals, consists of five permanent members, two of whom are considered employers representatives, two of whom are considered employee representatives and one who represents the interest of the public at large. ALJs, in the Hearing Division of the Workers' Compensation Board, hear a variety of cases, including compensability, responsibility, level of compensation (and extent of disability), safety and health and other issues. The Hearings Division also conducts hearings concerning citations and orders made by the Oregon Occupational Safety and Health Division (see "Agencies Responsible, Prevention and Health and Safety").

A workers' compensation order or decision of a Hearings Division Referee or ALJ can be appealed to the Workers' Compensation Board itself. The Board also exercises own-

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6 The Workers Compensation Board was created by statute in 1965 as an independent agency. It was continued as an independent agency within the DCBS in 1987.

7 The Workers Compensation Board is also responsible for conducting hearings and review of appeals from the Oregon Department of Justice decisions regarding application for compensation under the Crime Victim Assistance Program.

8 In 1994, the average length of time for rendering a decision was 156 days at ALJ level, 265 days at Board review level, and 295 days at Court of Appeal level.
motion jurisdiction, reviews Claim Disposition Agreements (Compromise and Release of workers' benefits) and resolves disputes between workers and workers compensation carriers arising from civil actions against allegedly liable third parties.  

There is judicial review of a decision of the Worker's Compensation Board to the Oregon Court of Appeals. A decision of the Court of Appeal can be appealed to the Supreme Court (at court's discretion and on matters of law only).

**ASSESSMENTS / FINANCING**

**Assessment or Premium Setting Process**

Oregon uses National Council on Compensation Insurance (NCCI) rate setting methodology for all insurers. All Oregon workers' compensation carriers, including SAIF, are required to use the NCCI experience rating plan as well (to be eligible for experience rating, insurers must have a minimum of $2,500 average annual premium). For small employers who are not eligible for experience rating, SAIF uses a merit rating plan. Under this plan, employers who are claim free get a five percent premium credit and employers with more than one indemnity or two claims in the base period are subject to a ten percent premium debit.

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9 Under the NCCI rate system, for most classes, rates are determined by applying load factors to NCCI set rates. These load factors are based on a combination of administrative, loss adjustment expense and investment income considerations, as well as an estimation of the extent to which NCCI's pure premiums understate or overstate the risk expected to be covered. (American Association of State Compensation Insurance Funds, 1996 AASCIF Fact Book. Phoenix, Arizona: AASCIF, 1996, page I-OR-2).
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Assessment/Premium Rates

Rates are set by insurers, but the Worker's Compensation Division has the authority to review rates and ensure that rates are not excessive, inadequate, or unfairly discriminatory.

SAIF receives no state financial support. SAIF derives all income from premiums and returns on investment. Excess profits are returned to policyholders in the form of dividends, rate reductions and improved services.

Second Injury / Disaster Funds

The Workers' Compensation Division of the DCBS administers the Reemployment Assistance Reserve, a subsequent injury fund that is financed through employer and worker assessments. The fund has two basic programs: the Employer at Injury Program and the Preferred Worker Program. The Employer-at-Injury Program is an employer activated program which is designed to encourage early return to work of an injured worker, before a claim closure. Benefits offered include a three month wage subsidy, early return-to-work bonuses and worksite modification.

The Preferred Worker Program covers an injured worker who has not refused "suitable work" with his employer. The goal of the Preferred Worker program is to encourage employers to rehire or hire Oregon injured workers. The program provides premium exemption, claim cost reimbursement, six month wage subsidy, obtained employment purchases (e.g. the worker's tools, clothing, moving expenses) and worksite modification.

The Division also administers a number of other special funds, including the:

- Retroactive Reserve, financed by an annually established assessment on both employer and worker at a rate not to exceed two cent per hour worked, is designed to provide increased benefits for claimants under older benefit schedules;

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10 When SAIF was established in 1913 it was originally capitalized by the State, but since then has received no financial support from the state.

11 The program is funded on a pre-pay basis through cents per hour assessments on employer payroll and employee pay. The assessment is determined annually by the Division.
• Handicapped Worker’s Reserve, financed by a portion of an annually established assessment collected from both employers and workers not to exceed two cents per hour worked, the purpose of which is to encourage the employment or reemployment of handicapped workers (this program was discontinued for new claims effective May 1990);

• Rehabilitation Reserve, financed by assessments on insurer premiums and simulated premiums of self insured employers, the purpose of which is to reimburse insurers for temporary total disability and rehabilitation cost on pre-1986 injuries;

• Reopened Claims Reserve, financed by a portion of annually established assessments collected from both employers and employees not to exceed two cents per hour the purpose of which is to reimburse insurers for additional compensation payable to injured workers whose claims are reopened;

• Self-Insured Employer Adjustment Reserve, financed by assessments on simulated premiums of self insured employers, the purpose of which is designed to pay the claim of workers of self insured employers who become insolvent; and

• Self-Insured Employer Group Adjustment Reserve, to pay the claims of workers when the group self-insurer is insolvent.
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### COMPENSATION BENEFITS

**Claim Rate**

In 1994, 108,000 claims were filed, or 84 claims per 1,000 workers covered.

**Medical Aid**

**Nature of Aid**

Medical aid coverage is comprehensive. All compensable and medically necessary and appropriate care is covered until the injured worker is declared to be "medically stationary". Even after closure of the claim, an injured worker may be eligible for certain medical services such as prescription medicine and services required to maintain their current employment.

**Choice of Provider**

The injured worker is allowed to make the initial choice of attending physician and can make two changes in attending physician without the approval of either the insurer or the DCBS director. Third and subsequent changes must be approved by the insurer or the director. If the injured worker is an employee of an employer who is enrolled in a MCO the injured worker must select a physician affiliated with that MCO after the claim is accepted. The worker's family physician may treat the worker if the physician agrees to the terms and conditions of the MCO.

**Medical Cost Containment Initiatives**

The Worker's Compensation Division has the authority to establish medical fee schedules. Physicians fees are limited to the 75th percentile of the usual and customary fees in Oregon. The Division also has the power to set hospital rates and the set hospital fee schedule is based on a cost-charge ratio.

Recent legislation authorized managed care organizations (MCO) to exist for the treatment of injured workers. MCOs in Oregon must be certified by the Division. Certified MCOs may then contract with insurance carriers and self insured employers to deliver managed care. SAIF contracts with MCOs to deliver medical care to injured workers of SAIF employers.

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12 As of September 1993 there were seven active MCOs and approximately 28,000 employers and 450,000 workers were covered by MCOs. Though the Division has the power to exempt MCOs from the set fee schedules, in practice fees charged by MCOs are proving to be lower than the fees set out in the schedules.
1995 legislative reforms enhanced incentives to use MCOs.

**Rehabilitation**

**Physical/ Occupational/ Vocational**

The legislation requires that an injured worker be provided with both physical and vocational rehabilitation. The cost of rehabilitation is covered by insurers and self insured employers.

Workers who are not fit or able to return to any employment that pays at least 80% of their pre-injury wage are eligible for evaluation, direct employment assistance and vocational training or retraining that must be provided by the insurer. A worker enrolled and actively engaged in an approved training plan is entitled to temporary total disability benefits, adjusted for any earnings. Eligibility for rehabilitation ends 120 days after the claim is closed, longer if the worker was eligible for training. Training is limited to 16 months in most cases.\(^\text{13}\)

**Social**

None identified.

**Rehabilitation Incentives**

The Employer-At-Injury program offers incentives to employers who reemploy their injured workers in light or modified work situations while their claims are still open. The goal of the program is to encourage employers to take a lead in early return to work for injured workers. (See "Second Injury / Disaster Funds" section).

**Trends in Treatment of Subjective Complaints**

None identified.

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\(^{13}\) The criteria used in determining a successful rehabilitation case is the return to work in suitable employment for at least 60 days. The definition of suitable employment includes that the job pay a suitable wage (a wage that is as close as possible to the wage paid to the worker in the worker's regular or former job). In 1992, there was a 79% success rate for workers completing a rehabilitation training plan (79% of those completing a training plan had returned to suitable employment by the end of vocational service). (U.S. Department of Labor, *State Workers Compensation Administration Profiles*, October, 1994, page 270).
Disability Benefits

Short-Term Benefits - Temporary Disability

Weekly "loss of earnings or wage loss" compensation:
Rate: 66.67% of average weekly wages up to a maximum of 100% of the state average weekly wage (SAWW) $518.60 for 1996/97 subject to a minimum of $50. For workers with temporary partial disabilities, the rate is based on the percentage of disability. Temporary partial wage benefits are offset against U.I. benefits.
Indexed: Effective July 1, 1997, the maximum limit will be subject to an increase based on SAWW rate.
Duration: Unlimited, the duration of the disability.
Taxable: No.
Employer's Excess / Waiting Periods: None.

Long-Term Benefits - Permanent Partial and Total Disability

Economic "loss of earnings or wage loss" awards or pensions:
Rate: 66.67% of average weekly wages up to 100% of SAWW plus, $5.00 per dependent up to a maximum of five dependents. Workers with partial permanent disabilities are entitled to a percentage based on the degree of disability.
Indexed: Effective July 1, 1997 the maximum limit will be subject to an increase based on SAWW rate.
Duration: Life.
Taxable: No.
Offset Against Other Social Security Benefits: Permanent total benefits are offset against social security benefits.

Award for "functional impairment":
Periodic (pension or annuity): None.
Lump-sum: Set maximum lump-sum payments are available for "scheduled" and non-scheduled" injuries.\(^{14}\)
Covers Disfigurement: Compensation is payable if disfigurement results in accepted psychological adjustment problems.

Impairment Schedule: No use of an impairment schedule -- degree of disability is determined in relation to the whole person.

Supplemental Awards: Reasonable and actual cost of special clothing due to prosthetics is covered by the scheme.

\(^{14}\) As of January 1, 1996, the payment for scheduled injuries is calculated at $420 per degree; and for non-scheduled injuries at $130 per degree for first 64 degrees, $230 per degree from 64.1 through 160 degrees and $625 per degree from 160.1 through 320 degrees.
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**Hearing Loss**

Workers with a hearing loss of greater than 25% (using ANSI guidelines) that is attributable to work are eligible for a lump sum benefit of $80,640 for total hearing loss (92% ANSI) and to a lump-sum benefit of $25,200 for loss of hearing in one ear (as of January 1, 1996). There is a deduction for presbycusis (loss of hearing caused by old age).

**Death Benefits**

*Funeral Expense Benefits*

*Funeral Costs*: A burial allowance of up to 10 times SAWW, is provided to cover funeral costs and incidental expenses.

*Emergency Lump-sum*: None.

**Survivor Benefits**

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<th>Survivor Category</th>
<th>Lump-sum</th>
<th>Pension</th>
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<tr>
<td>Surviving spouse</td>
<td>Only on remarriage, a lump-sum payment equal to 24 times the monthly benefit.</td>
<td>66.7% of deceased's SAWW times 4.35 to a maximum of $1,504.02 a month (1996/97) available for life or until remarriage.</td>
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<tr>
<td>Dependent children</td>
<td>None.</td>
<td>$225.59 per child to a monthly maximum amount of 133.33% of SAWW times 4.35 (maximum $3,007.80 in 1996/97), when combined with spousal pension, until child reaches 18 years of age, or 23 if full time student.</td>
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### HEATH & SAFETY & PREVENTION

#### Agencies Responsible
The Oregon Occupational Safety and Health Division (OR-OSHA), a Division of the Oregon Department of Consumer and Business Services, administers the *Oregon Safe Employment Act* and *Oregon Occupational Safety and Health Rules* under a state plan agreement with federal OSHA. OR-OSHA is responsible for setting regulations and administering rules governing safety and health and the enforcement of such rules. SAIF is required by law set by OR-OSHA to provide safety and health services to its policy holders. The inspection of mines is handled by the Mine Health and Safety Administration.

The goal of the Division is to reduce and prevent occupational injuries, illnesses and fatalities through the imposition of occupational health and safety rules and regulations, work-site consultation and training for employers and employees, and research and education to provided safety information and resources to workers and managers. OR-OSHA has the power to enforce its occupational health and safety rules through unannounced inspections of worksites and imposition of orders and citations. The commitment to occupational health and safety in Oregon is based on the principle that "reduced workplace injuries and illnesses, in turn, reduces the workers' compensation burden in Oregon" (OR-OSHA website).

#### Source of Funding
OR-OSHA is fully funded by government.

#### Accident Reporting
An employer must report all accidents or injuries to the Workers' Compensation Division within three days of becoming aware of the incident.

#### OHS Representatives & Committees
Employers with 11 or more employees are required to establish workplace safety committees. Smaller employers, who are considered "high hazard (they have a high lost workday case incident rate or high premium classification rate) must also establish workplace safety committees. Committees must hold regular meetings to evaluate accident and illness prevention programs; conduct inspections of the worksite at least quarterly; review inspection reports; evaluate accountability systems; and establish procedures for
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investigation and communication. Health and Safety Committees were first mandated in 1973, but the provisions were significantly enhanced in the 1990 reforms.

Offenses & Penalties

Contraventions of the Legislation

OR-OHSA will refer cases it feels warrant criminal prosecution to the Office of the District Attorney. A person found guilty of contravening the OHS Act or regulations is liable to a fine of up to $10,000 and/or up to six months imprisonment. (there are no statistics available on the number of criminal prosecutions or convictions). However, the emphasis is on the use of citations and civil penalties, rather than criminal prosecutions.

Administrative Penalties

The Director of the DCBS or an authorized representative of the director has the authority to assess civil penalties for violations of the requirements of the state OHS legislation. A civil penalty of $50 and not more than $7,000 can be assessed for serious violations (a serious violation being a condition or a practice in a workplace that could or has resulted in a death or serious physical harm). An employer who willfully or repeatedly violates safety and health requirements may be assessed a civil penalty of not more than $10,000 for a violation but not less than $5,000 for a willful violation.

OHS Legislative Review

There is no legislated requirement for the systematic, periodic review of the OHS legislation in Oregon. However, standards and regulations are subject to regular review to ensure that they are kept up to date and abreast of technological advancements.

Health and Safety and Loss Prevention Initiatives

Every employer and self-insured employer with a threshold number of workers is required to establish and implement a written occupational health and safety and loss prevention policy and program. This program must include: management commitment to health and safety; accountability systems; training, hazard assessment and control, including regular workplace inspections to detect hazards; investigations of all occupational injuries and illnesses; evaluation and maintenance of personal protective equipment and devices; evaluation of workplace design; and employee involvement in all aspects.
FRAUD PREVENTION

SAIF and many private insurance carriers have fraud prevention and investigation programs, including surveillance and accident reconstruction.

There are 49 full-time equivalent staff dedicated to fraud prevention at the SAIF Corporation. In 1996 the fraud prevention unit at SAIF conducted 6,761 investigations regarding compensability (6,480 in 1995); 803 survellances (550 in 1995); and 164 fraud investigations (144 in 1995). In 1996, SAIF had 32 successful prosecutions and in 1995, 14 convictions. It is estimated that approximately 6 to 10% of all claims are fraudulent (out of total claims of about 40,000).