Comparative Review of Workers' Compensation Systems in Select Jurisdictions

JURISDICTION: WASHINGTON

ENVIRONMENT

Population Size  5.5 million in 1996.
Labor Force  2.8 million in 1996.

Demographic and Economic Indicators

The state experienced an economic slow-down in the late 1980s and early 1990s but growth has increased recently. This reflects the state's growth in aerospace technology. The forest products industry went through major, extended restructuring and has now stabilized.

Population growth has traditionally been strong. It eased during the economic slowdown and is now returning to strong growth.

The unemployment rate in 1995/96 was 6%. The state average weekly wage rate (SAWW) was $522.84 in 1996.
### GOVERNANCE & ADMINISTRATION

<table>
<thead>
<tr>
<th><strong>Nature of System</strong></th>
<th>A state-based, compulsory workers' compensation system with an exclusive, or monopolistic state fund.(^1) operated within the Department of Labor and Industry (DLI).</th>
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</thead>
<tbody>
<tr>
<td><strong>Principles and Mandate</strong></td>
<td>The state fund is based on a commitment to a public-sector managed and operated system which provides coverage at minimal cost.</td>
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<td><strong>Access to Litigation</strong></td>
<td>Covered employees may not sue employer for illness or injury covered by workers' compensation, but may sue for intentional injury (e.g. assaults). Appeals are ultimately heard by the courts.</td>
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<tr>
<td><strong>Scope of System</strong></td>
<td>All employees covered under state law (i.e. not federal) except most domestic workers, and most owners (sole proprietors, partners, senior executive shareholders).</td>
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<tr>
<td><strong>Who is Covered?</strong></td>
<td>In 1996, of the total labour force of 2.8 million, 1.9 million or 68% of workers were covered by workers' compensation. The state fund insures 71% of employers with the remainder self-insured.</td>
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<tr>
<td><strong>What is Covered?</strong></td>
<td>Accidental injury &quot;in the course of employment&quot; and occupational disease that &quot;arises naturally and approximately out of employment&quot; is covered by workers' compensation insurance. Mental disability resulting from mental stress is not covered (this is a statutory exclusion).</td>
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<tr>
<td><strong>Self Insurance</strong></td>
<td>Self insurance is permitted in Washington State for companies with a minimum of 3 years in operation, a minimum net worth of $2 million and which have an operating accident prevention program for at least 6 months before applying.</td>
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\(^1\) As of 1997, Washington is only one of six states that has an exclusive state fund. The others are: Ohio, Nevada, North Dakota, West Virginia, and Wyoming.
## Organizational Framework

There are 1,637 employees within the Department of Labor and Industry (DLI) in the Insurance Service and other divisions responsible for the administration of the funds. There are 22 full service locations around the state.

## Governance Structure

The Director of Labor and Industry is appointed by the Governor.

## Policy Development

There is a multi-stakeholder Workers' Compensation Advisory Committee which holds public hearings and acts in an advisory capacity to the DLI.

## Accountability

As a government department, the DLI is directly accountable and reports to government.

## Performance Assessment

An Administrative Inventory was completed for the Washington State system in 1989 and updated in 1996. Reforms were implemented in 1985 in response to escalating costs and an increasing deficit, both of which have been reversed by repealing mandatory vocational rehabilitation, managing medical costs more intensively, improving tracking and management information systems and developing workplace safety programs, with incentives for employer participation.

A Managed Care Pilot project, which ended at the end of 1996 was subjected to an independent evaluation, completed in April, 1997.

## Claims Adjudication Process

The employee makes a claim either to the Department, or to the employer if self-insured. State-fund claims are assessed by a claims manager who either accepts or rejects the claim. The worker and employer may protest in writing within 60 days. A self-insured employer may contest a claim within 30 days by informing the worker and the Self-insurance Section of the DLI, which then assigns a claim adjudicator.
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Washington

Dispute Resolution
Mediation / Conciliation

There are no formal or statutory provisions respecting mediation in the Washington system.

Appeals Process

Protested claims, whether state-fund or self-insured are first referred to another claims adjudicator in the DLI to attempt to resolve the issue (reconsideration process). However, compromise and lump-sum payment settlements are not allowed.

A claim that has been reconsidered internally, may be appealed by either party within 60 days to the Board of Industrial Insurance Appeals (BIIA), a completely independent body from the DLI which hears appeals from disputed decisions of the DLI.

The BIIA assigns a judge who proposes a decision. If the proposal is not accepted by both parties, it is considered by the Board, whose decision can be appealed to the Superior Court, Court of Appeals and ultimately the Supreme Court.

As a way to resolve the dispute, the DLI has the option to reassume a claim being appealed and reconsider it, even though a final order has been issued. If unresolved within 90 days, reassumed claims can be appealed again to the BIIA.
ASSESSMENTS / FINANCING

Assessment or Premium Setting Process

Premiums are set by the DLI using standard (for the U.S.) ratemaking procedures based on hours worked. Premiums are based on both industry experience rating and firm experience rating. Small firms who are claim-free are eligible for a discount. Larger firms, or small firms who are members of a group plan, can choose to join a retrospective rating plan. Under retrospective rating, refunds or surcharges are applied after the fact based on claims experience. That is, lower than expected claims generate refunds and higher than expected claims generate surcharges.

Assessment/Premium Rates

Rates are set by DLI and, because Washington has an exclusive state fund there are no rates set by private insurers and thus no monitoring or regulation.

Second Injury Funds / Disaster Funds

Washington has three special funds: the Second Injury Fund, the Pension Reserve Fund and the Asbestos Fund.

The Second Injury Fund encourages the hiring of workers with pre-existing conditions which would otherwise increase the risk to the employer by paying the difference between the costs associated with an claim and the cost of that claim if there had been no previous injury. The Pension Reserve Fund pays benefits to all permanently disabled workers and dependents of workers fatally injured for both the state fund and self insured employers. Funding is provided by transfers from the Accident Fund and by deposits from self-insured employers. The Asbestos Fund serves to spread the costs of occupational disease associated with asbestos across all firms rather than having these claims affect the experience ratings of particular firms and industries.
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COMPENSATION
BENEFITS

Claim Rate
In 1997, 259,613 claims were filed or 120 per 1,000 employees covered. This includes the state fund and all self insureds.

Medical Aid

Nature of Aid
Full medical coverage is provided, without any deductible, regardless of whether there is also a time-loss claim.

Choice of Provider
The worker has freedom of choice respecting his or her treating physician but the fund is involved in choosing specialists. Changes to provider must be approved by DLI.

Medical Cost Containment Initiatives
Washington has a range of medical cost containment initiatives including a set fee schedule for use by both the state-fund and self-insured employers, and managed care approaches such as the use of occupational nurse and physician consultants, utilization review, orthopedic case monitoring, a provider peer review program and a chiropractic consultation program.

There are two long-term disability prevention pilot programs in place based on intensive claims management and return to work initiatives. There is also a Managed Care Pilot Project involving 120 firms and 7,700 employees using Managed Care Organizations (MCOs). An evaluation report on the pilot project became available in April, 1997.

Rehabilitation

Physical/Occupational/Vocational
Vocational rehabilitation and the timing of referral is discretionary, based on need. One of the primary purposes of occupational and vocational rehabilitation is to enable the injured worker to become employable at gainful employment. Return to work intervention is provided to assist return to work with the same employer. Plans are developed involving retraining and job modification, where appropriate. Mandatory rehabilitation was removed in 1985 because it was seen as a major cost driver.
Social

Rehabilitation benefits may include the cost of books, tuition, supplies, transportation, child or dependent care, and other necessary expenses in an amount not to exceed $3,000.00 in a 52 week period. This amount and the time limit may be extended. Funds for job, home and vehicle modification are also available.

Rehabilitation Incentives

For employable workers unable to return to the previous employer, job search skills training is available. There is no re-employment right.

There is a "Preferred Worker Program" which provides an opportunity for employers to save money while hiring experienced high-quality staff. Participating employers receive financial benefit in that they do not pay industrial insurance premiums for three years following the date of hire.

Trends in Treatment of Subjective Complaints

Mental disability arising from stress is not covered.

Disability Benefits

Short-Term Benefits - Temporary Disability

Weekly "loss of earnings or wage loss" compensation:
Rate: 60 to 75% of wages depending on number of dependents to a maximum of 120% of State Average Monthly Wage (SAMW), 2,859.40 for fiscal year 1997.
Indexed: Adjusted every July 1st based on changes to SAMW, subject to the statutory maximum for the period when the injury occurred.
Duration: For the duration of the disability.
Taxable: No.
Employer’s Excess/Waiting Periods: There is a three day waiting period for employees, retroactively reimbursed if disability continues for 14 days or more.
Long-Term Benefits - Permanent Partial and Total Disability

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<tr>
<th>Economic &quot;loss of earnings or wage loss&quot; awards or pensions:</th>
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<td>Rate: 60 to 75% of wages depending on number of dependents to a maximum of 120% of State Average Monthly Wage (SAMW), 2,859.40 for fiscal year 1997</td>
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<td>Indexed: Adjusted every July 1st based on changes to SAMW, subject to the statutory maximum for the period when the injury occurred.</td>
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<tr>
<td>Duration: For the duration of the disability.</td>
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<tr>
<td>Taxable: No.</td>
</tr>
<tr>
<td>Offset Against Other Social Security Benefits: Offset against social security where applicable to ensure social security payments are not reduced (80% of average weekly wage).</td>
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Award for permanent physical impairment:

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<tr>
<th>Periodic (pension or annuity):</th>
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<tr>
<td>None.</td>
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Lump-sum: Based on schedule or percentage of bodily impairment for non-schedule injuries. May be in addition to disability payments (permanent or temporary). Maximum for combined losses is $132,457.47 (1997).

Covers Disfigurement: No.

Impairment Schedule: Statutory schedule covering 34 specific losses.

Supplemental Awards: Annual awards are made to cover the reasonable and actual costs of special clothing items related to the wearing of a prosthetic are provided. The actual and reasonable costs of necessary personal or attendant care are also covered by the scheme.

Hearing Loss Covered if directly related to employment.
### Death Benefits

#### Funeral Expense Benefits

*Funeral Costs:* A lump-sum death benefits and burial allowance of up to two times SAMW, is provided ($4,766 in 1997).

*Emergency Lump-sum:* See above.

#### Survivor Benefits

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<th>Survivor Category</th>
<th>Lump-sum</th>
<th>Pension</th>
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<td>Surviving spouse</td>
<td>Only on remarriage, a lump-sum payment equal to 24 times the monthly benefit up to a maximum of 50% of the annuity value of the survivor pension.</td>
<td>60 to 75% of deceased's wages depending on number of dependents up to a maximum of 120% of SAMW, available until 65 years, when social security applies, or until remarriage.</td>
</tr>
<tr>
<td>Dependent children, no surviving spouse</td>
<td>None.</td>
<td>One child, 35% of the deceased's wages, other children, 15% per child. to a maximum of the lessor of 65% of the deceased's wages or 120% of SAMW, until 18 or 23 if full time student.</td>
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</tbody>
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HEALTH & SAFETY & PREVENTION

Agencies Responsible

Washington has a state health and safety act which complies with the federal health and safety standards. The Washington Industrial Safety and Health Act (WISH Act)\(^2\) administered by the Consultation and Compliance Services Division of the DLI.

The Division is responsible for advising on policy development and administering and enforcing the occupational and health and safety and accident prevention program requirement of the legislation. The Division has a staff of about 100 providing on-site health and safety consultation, including workplace evaluations and recommendations. Each year about 1,000 free workshops are provided throughout the state.

Source of Funding

Unknown.

Accident Reporting

Employers are required to report and keep records of all accidents.

OHS Representatives & Committees

Employers are required to develop and maintain a written accident prevention program and employers with more than ten employees must establish OHS committees composed of employer and worker representatives.

Offenses and Penalties

Contraventions of the Legislation

Unknown.

Administrative Penalties

Unknown.

OHS Legislative Review

Unknown.

Health and Safety and Loss Prevention Initiatives

None identified.

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\(^2\) The WISH Act took effect in 1973, and in 1976 became the USA's first fully operational state safety and health plan approved by the federal government.
The DLI has an active investigation and fraud program. Regional investigation units are located throughout the state, employing approximately 26 investigators to respond to allegations of industrial insurance fraud. A centralized fraud program is located in the department headquarters (consisting of a program manager, investigator trainer, and two fraud adjudicators) to evaluate the investigative findings and determine the appropriate action(s) against the individual.

In 1996, investigators completed 1,739 validity investigations and 1,210 activity checks, which resulted in 73 full fraud investigations. The fraud investigations resulted in the issuance of 60 civil fraud orders demanding repayment of $2,354,706.82 in assessments and penalties.