

# ...Workers' comp benefits vary by state

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presently is, in general, inadequate and inequitable.”

Many states did make improvements. But a wave of cut-backs began in the 1990s, swelled in the mid-2000s, and picked up again after the 2008 recession. The U.S. Labor Department used to keep track of how states complied with the presidential commission's recommendations, but stopped in 2004.

A few days after ProPublica and NPR published their investigation, the U.S. Occupational Safety and Health Administration (OSHA) released its own report, entitled “Adding Inequality to Injury: The Costs of Failing to Protect Workers on the Job.” The OSHA report says employers are increasingly using temporary workers, and misclassifying wage employees as independent contractors—both of which are increasing the risk of injury and adding to the number of workers facing financial hardships because of work-

place injuries. When employers classify workers as “independent contractors,” they don't pay workers' compensation insurance. The OSHA report says that reduces their incentive to take responsibility for safe working conditions, which may result in increased overall risk of workplace injury.

The report pointed to two studies in the American Journal of Industrial Medicine, which found that more than half of hospital patients with work-related amputations in Massachusetts, and a third of those patients in California, didn't receive workers' comp benefits.

“We've seen a devastating strategic combination of employers and insurers, state by state, to gut workers' comp laws,” says Peg Seminario, workers health expert at the national AFL-CIO. “The system we now have in place in so many states is utterly failing workers, with the result that people are both economically and psychologically devastated.”

## Washington

Fending off attacks on the system

Like other states in the ProPublica report (See Page 1), Washington has seen its workers' comp premiums fall—from \$3.81 for every \$100 of wages in 1988 to \$2.00 today.

David Groves, communications director at the Washington State Labor Council, AFL-CIO, says in part that's because workplaces have gotten safer, and the system has gotten better at returning workers to work.

“We think we have overall a good system,” Groves said.

But in recent years, Republican legislators have pushed the same kinds of cuts to workers comp benefits as other states. The union movement has been able to prevent those bills from passing, with one exception.

In 2011, in the depths of the recession, the public workers' comp agency run by the state Bureau of Labor and Industries had lost assets in the financial market downturn, and its reserve fund was precariously low. Then-governor Christine Gregoire asked lawmakers to pass reforms to save money and build up reserves without rais-

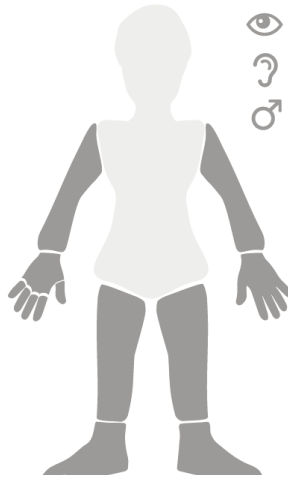
ing rates. Organized labor agreed with most of the reforms, but lost a hard fight against one: allowing injured workers to accept lump-sum payments instead of monthly benefits. WSLC objected that it would be in workers' best financial interest long-term to get the payments over time, but by the time they were in settlement talks, they're often desperate and have been out of work for months. WSLC was able to get the voluntary settlements limited to workers age 50 and over.

But ever since then, Republican lawmakers and business interests have pushed to eliminate that age limit and expand the buyouts, and to cut and cap benefits, restrict eligibility, and give employers control over which doctors injured workers use. So far, none of those proposals have passed, but Groves says WSLC has to stay vigilant.

And workers' comp is as political in Washington as elsewhere: Rob McKenna, 2012 Republican candidate for governor, campaigned to privatize the state workers' comp system, a proposal voters soundly rejected in an earlier ballot measure.

## How much is an arm worth?

If you suffer a permanent injury on the job, you're typically entitled to compensation for the damage to your body and your future lost wages. But depending on the state, benefits for the same body part can differ dramatically.



	National Average	Oregon	Washington
Arm	\$169,878	\$234,080	\$118,266
Leg	\$153,221	\$199,491	\$118,266
Hand	\$144,930	\$199,491	\$106,440
Foot	\$91,779	\$186,187	\$82,787
Eye	\$96,700	\$156,920	\$47,306
Ear	\$38,050	\$124,991	\$15,769
Testicle	\$27,678	N/A	\$9,856

## Oregon

Low premiums, high benefits. How do they do it?

Given that workers' compensation systems are worsening nationwide, as documented by a ProPublica report [See related story Page 1], how is Oregon's system faring? It depends to some extent on who you ask.

“We really have not engaged in the kinds of cuts mentioned in the ProPublica investigation,” says Oregon State Sen. Diane Rosenbaum (D-Portland), a workers' comp expert.

Yet Oregon's workers' comp premiums have fallen even more than those in other states. Much earlier than other states, Oregon passed controversial legislation to lower workers' comp premiums—in 1990. Since then, Oregon workers' comp premiums have fallen from an average of \$4.86 for every \$100 in wages in 1988 to \$1.37 today. That's remarkable given that medical costs—which make up over half of what workers' comp pays for—have only gone up. And unlike other states, Oregon actually increased benefit levels while lowering the premiums. Where have the savings come from?

“It's an oversimplification to say those savings are on the backs of workers,” says attorney Nelson Hall, who's represented workers in workers' comp cases since before the 1990 changes.

But in one sense, some of the

savings literally *do* come on the backs of workers—because back conditions are one of the biggest categories of denied claims: The 1990 law changed the definition of compensable injury. Before, insurers paid claims when the workplace was a “contributing factor” to the injury or illness. Now, the workplace has to be the “major contributing cause,” i.e., at least 51 percent of the problem.

As a result, thousands of workers, particularly older workers, have had claims denied. They injure their back or a joint on the job, and have initial claims paid, but then get dropped from further benefits when doctors determine there was pre-existing deterioration.

“One of the classic situations in Oregon is, ‘We'll accept the back strain, but we're not going to accept the underlying herniated disk,’” says Hall, the attorney. “Insurance doctors will line up by the dozen and say somehow miraculously a muscle strain resolves in six to eight weeks.... So if you're still having problems after three months, it must not be the muscle strain accepted as work related; it must be some other problem.”

John Shilts, head of Oregon's workers' comp division, admits some savings have come from the “major contributing cause” change, but says much of Oregon's savings come from a focus on returning workers to work as soon as doctors determine they're able. Oregon employers get a break on premiums when they bring an injured worker

back on light duty while they're recovering. And when injuries require extended absence from work, new employers get a 50 percent wage subsidy for three months for hiring an injured worker, plus money for special equipment, clothing, and training. Those features save the system money on wage replacement. Oregon also relies on managed care organizations to contain costs.

“Doctors today treat workers more like athletes,” Shilts says. Shilts says Oregon also saved money by creating the Management Labor Advisory Committee (MLAC)—made up only of employer and labor representatives—to hash out future policy changes. By custom, the Oregon Legislature won't consider any reform that hasn't been approved by MLAC. In theory, that lessens the influence of other vested interests, like doctors, lawyers, and insurance companies. But it also means no reform is likely that benefits only workers. And it turns out that the exclusion of doctors and lawyers may have gone too far. There were as many as 400 workers' comp attorneys defending Oregon workers 25 years ago; today there are as few as 70, and it can be hard for an injured worker to find representation. Meanwhile, many doctors today refuse to take workers' comp patients because of the added paperwork. Sen. Rosenbaum, a former member of MLAC, says the Legislature is looking at tweaks increasing attorney compensation to attract more worker advocates.