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Total Permanent Disability in Washington

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Total Permanent Disability in Washington

This article is based on a technical report titled Washington State Pension System Review, which will be available from the Upjohn Institute in December.

Recently the Upjohn Institute completed a study of the incidence of total permanent disability (TPD) pension claims in the workers' compensation system of Washington State. As shown in Figure 1, the number of such awards nearly tripled from 1996 to 2003. Such claims are fairly rare in U.S. workers' compensation programs; the national insurance rate making organization reports that the "countrywide" (36-state) average incidence is about seven total permanent disability claims annually per 100,000 workers (NCCI, "Annual Statistical Bulletin," 2008). That would mean less than 200 TPD pension claims in Washington each year.

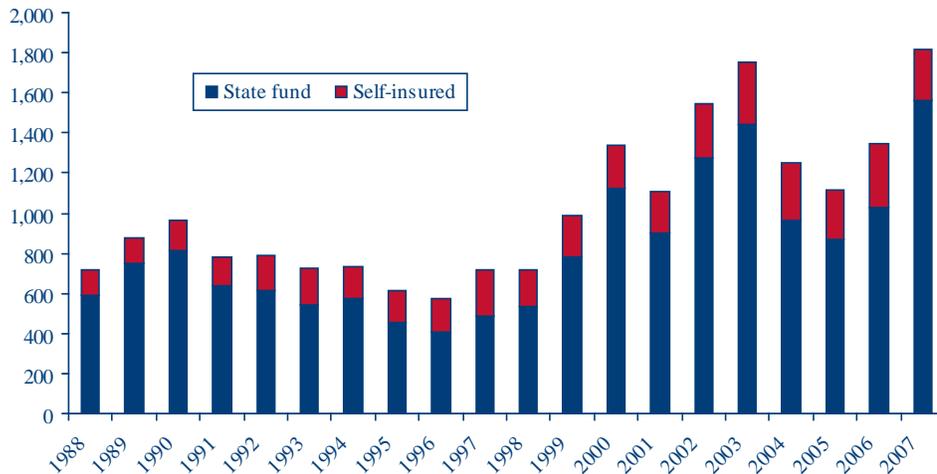
The incidence in Washington is four to eight times that rate, and two to four times the level of the highest other states (California, Montana, and Florida). Because these claims are very expensive and the pensions last for life (or even beyond in Washington because of a survivor annuity option), this rapid increase in TPD pensions gave rise to intense concern among policymakers in Olympia. As a result, the legislature called for a study of the causes of the rise, and the Upjohn Institute won the contract with the Washington Department of Labor and Industries (L&I) to design and conduct the study.

The Upjohn Institute assembled a team of six experts from across North America to investigate this issue. In addition to reviewing the relevant documents and publications from Washington, the study involved a review of permanent disability compensation policy in Washington and other states, a direct comparison with a Canadian province sharing many workers' compensation system characteristics, a special claim review study that gathered detailed information from administrative files on a sample of Washington workers' compensation claims from 1997 and 2002, and empirical analysis of L&I data on workers' compensation claims.

Our analytical approach included comparing random samples of TPD claims awarded in 1997 and 2002 to discern possible causes of the "upsurge" in pension awards. We used propensity scoring to draw a matched sample of comparison claims that most closely resembled the TPD claims in these two years. We compared the characteristics of 1997 and 2002 pension claims and comparison claims to test specific hypotheses about causes of the increase.

Washington is one of only four states with a public fund that is the exclusive option for employers to insure their state mandated workers' compensation liability against industrial injuries and diseases (the others are Ohio, North Dakota, and Wyoming). In other states, private commercial casualty insurance companies are allowed to operate in

Figure 1 Number of TPD Pensions Awarded by Fiscal Year



SOURCE: Washington Department of Labor and Industries, Research and Data Services.

the workers' compensation market, frequently in competition with a public insurance fund (20 states). In all states, self-insurance is generally available for the largest employers, whose financial status justifies the assumption that they will be available to pay claims far into the future.

Findings

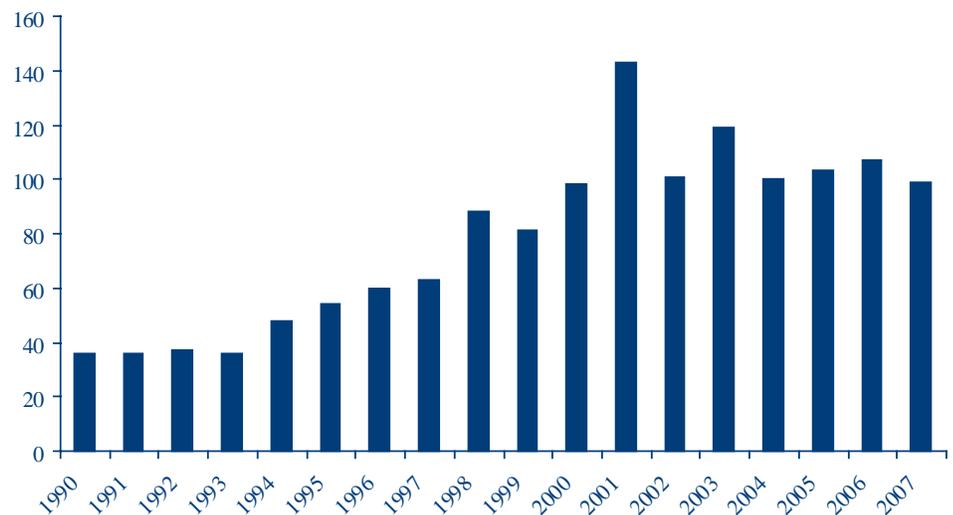
We determined that there was a significant "lumpiness" in claims processing that contributed to the increase in pensions. This inventory adjustment process for workers' compensation claims may have accounted for half of the increase in pension incidence during the relevant period. This increase was the unintended consequence of an administrative attempt to reduce the average duration of workers' compensation claims that began in 1997. The L&I administration reallocated 59 positions to attempt to improve claims administration in the middle of 1997. This was further augmented when the Washington legislature appropriated funds for an additional 24 claims manager positions, contingent on L&I reducing average time-loss duration 5 percent by June 30, 2000, and another 2.5 percent by June 30, 2001.

One of the ways that durations were reduced was by referring long-term time-loss claims for pension evaluation.

This is reflected in Figure 2, which shows a doubling in the staffing level for pension adjudicators during this same period. The result was that a lot of older claims were cleared out of the workers' compensation system, and the average time-loss duration of claims receiving TPD pensions declined from eight years to six years.

There were a number of other factors that contributed to the increase in pensions, particularly the hard economic times in the state of Washington. This

Figure 2 Pension Adjudicator Staffing (in FTEs)

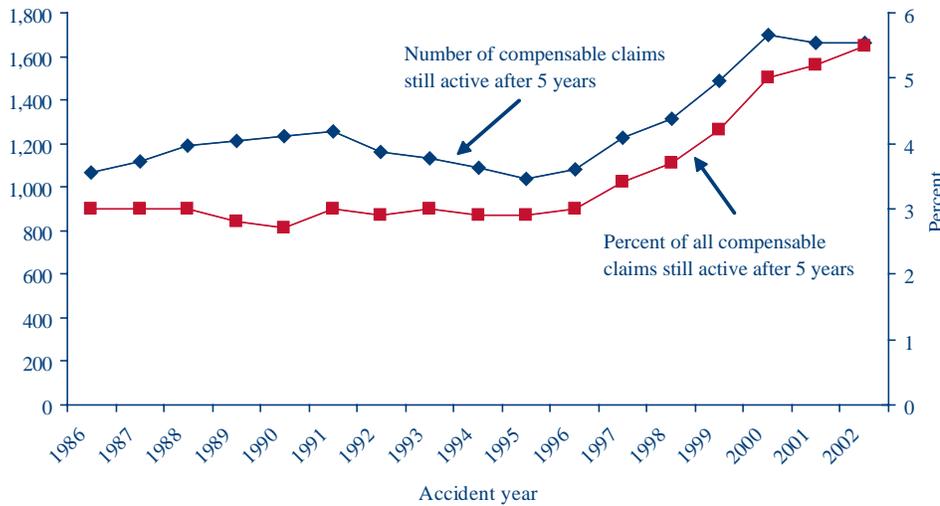


SOURCE: Washington Department of Labor and Industries, Data Warehouse.

was demonstrated by the fact that our analysis showed that there was a 60 percent increase in the number of pension awards to workers from economically disadvantaged areas of the state from 1997 to 2002. Among other possible causative factors that we investigated were the age of injured workers, the number and severity of their injuries, the frequency of back injuries and psychological claims, the type of treatment including use of opioid (narcotic pain killer) prescriptions and spinal fusion surgery, previous claims, appeals, legal decisions, self-insurance and the second injury fund, and vocational rehabilitation practices. Our multivariate analyses of L&I claims data explained between one-third and one-half of the variation in pension outcomes between 1997 and 2002.

However, Figure 3 shows that the number of compensable claims still active after five years continued to increase during the period of the upsurge, as did the percentage of all compensable claims active after five years. So, in addition to the increase in pension claims caused by the administrative attention to claims management, there was an underlying increase in the number of long-term claims in the Washington workers' compensation system.

Figure 3 Five-Year-Old Active Claims



SOURCE: Washington Department of Labor and Industries, Actuarial Department.

Conclusion

We believe there are specific provisions in Washington that may serve to increase the frequency of TPD claims as well as the duration of temporary time loss. These involve the articulation between permanent partial and total permanent disability in the workers’ compensation system. The problem is illustrated by the example of the professional concert pianist who loses the end of her finger in a work-related accident. While her physical impairment (medical disability) may be relatively slight, it could mean a total loss of her ability to earn her living (work disability). In a “loss of earning capacity” system, an estimate of her economic losses would be made and compensation set accordingly. Or a compromise and release agreement might be entered on the basis of a negotiated settlement.

Washington awards permanent partial disability payments strictly on the basis of the “impairment rating” resulting from the injury or disease. They are 1 of 19 states in the United States who follow this practice. But they use a broader work disability standard to evaluate total permanent disability. Washington is one of only two states that follow this combination of practices. In Washington the worker is totally disabled for the purposes of a pension when the injury or disease permanently incapacitates the

worker from obtaining and performing any work at any gainful occupation, or for certain specific losses enumerated in the statute. So for the injured pianist in Washington, the workers’ compensation system would likely award her only a very small permanent partial disability benefit, since she would be capable of performing many other jobs. Many people would consider this to be inequitable because of her likely substantial wage loss.

The statute in Washington also does not allow compromise and release

settlement of workers’ compensation claims. In the private insurance sector, these compromise settlements are regarded as a way to accommodate difficult or unusual situations in the workers’ compensation system, sometimes regardless of the statutory language. So, in a case like the concert pianist, the parties might reach a compromise settlement that provides a middle ground between the two extremes.

Where a work-related injury or disease is preventing the worker from earning a living as before, but did not cause a highly rated medical impairment, the workers’ compensation system in Washington offers only two relatively extreme options, a low impairment rating with consequent small benefit, or a total permanent disability pension, with no compromise in between. In addition, medical coverage for pension claimants is available only under limited circumstances. So, facing such difficult options, it is no surprise that Washington has extremely long durations of temporary wage-loss payments. We believe the lack of flexibility in compensating permanent partial disability leads to longer durations of time loss and ultimately more total permanent disability pension awards.

H. Allan Hunt is a senior economist at the Upjohn Institute.

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